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Fiscal Autonomy – Myths and Realities (J. R. Gupta)

Reviewing Constitution : A Continuing Dilemma (Arshi Khan)

Distinctive Features of the Crisis (C. B. Muthamma)

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Fiscal Autonomy -- Myths and Realities

(J.R. Gupta)

The institution of 'National Commission to Review the Working of the Constitution' has led to the different interpretations of the concept of fiscal autonomy. In the context of States, it is broadly interpreted that fiscal autonomy means more devolution of powers to the States to collect revenue from tax and non-tax sources. It is rightly argued that expenditure needs of the States have grown tremendously because of the socio-economic and developmental functions allocated to them under Article 246. However, their income from tax and non-tax sources have lagged behind. On the other hand, tax revenue alone of the Union Government has grown enormously, because all the elastic sources of revenue, viz. income tax, corporation tax, Union excise duty and custom duties have been assigned to the Union Government. Therefore, the States have to depend on the mercy of the Union Government to meet their expenditure requirements.

It is being argued that the Union Government must transfer some of its revenue powers to the States. In other words the tax and non-tax powers of the States must match with their expenditure needs. But here lies the catch, because in a federal set-up, the distribution of functions and hence taxing powers and expenditure items is done on certain accepted principles. Functions which are considered of national and international importance or which have inter-state ramifications are assigned to the Centre and those which are of local or regional in nature are delegated to the States. Based on this principle income tax, corporation tax, Union excise duty and custom duty have been assigned to the Union Government as per our Constitution. While tax on consumption (sales tax), agricultural taxes, etc. are assigned to

as per the Constitution of India

the States. One can well imagine that what will happen if a tax on production (Union excise duty) is assigned to the States. It can play a great havoc to our economy when one State specialising in the production of a commodity may like to shift the tax burden on the consumers of importing States. Same will be the case with income tax and corporation tax if different States follow different tax policies. The major casualty would be foreign trade if custom duties are assigned to the States. It logically follows, therefore, that the Union Government may have greater access to financial resources. However, in a successful federation in order to ensure level playing field, financial autonomy has to be granted to the States.

Theoretically speaking in a federal country financial autonomy means that the financial resources of the Government at all levels (Union, State and the Local bodies) are sufficient to perform the functions allotted to them as per their constitutional jurisdiction. That is in order to meet their financial needs there should be an automatic mechanism to have access to corresponding resources. No one should depend on the mercy of the others., And this is what was originally designed in our Constitution. It is unfortunate that over the period the financial autonomy of the States has been eroded by the acts of omission and commission of the Union Government which has landed our federal set-up in a current mess compelling the Union Government to have a fresh look on the working of our Constitution.

The first set back to States' taxing powers was received when sales tax (which is a State subject) on three important items, viz. sugar, textile and tobacco was replaced by additional excise duty by the Centre. In the same year tax on railway passenger fare (whose 100 per cent proceeds were States' right) was abolished. In 1961 the nomenclature of tax on 'Company's

income' was changed to 'corporation tax', thereby depriving the States of their legitimate share, because whereas the former was sharable, the latter was not. Later on Mr. V.P. Singh in 1985, when he was the Union Finance Minister, also tried to further encroach upon the certain rights of the States under the garb of Long Term Fiscal Policy, he could succeed only in a limited way, because by that time the States had started asserting their Constitutional powers. The tendency of encroaching upon the States' constitutional jurisdiction has been particularly aggravated by the institution of Planning Commission which has no statutory authority. This problem of encroachment has become very acute because of the fact that the Planning Commission has far stretched its financial net. The Planning Commission distributes as much as 75 per cent of the total grants to the States compared with the Finance Commission, whose share is hardy 25 per cent, because some discretionary grants also come directly through the Ministerial channels.

It has also to be stressed that with a view to enhance the financial health of the States, Article 280 requires the constitution of Finance Commission every five years or earlier. The basic objective of this provision was broadly to ensure financial autonomy to the States. But this provision has been grossly misused in the past both by the Centre and the States. The Tenth Finance Commission's recommendation to transfer 29 per cent of the 'gross proceeds' from all Central taxes to the States was arbitrarily changed to 'net proceeds', thereby depriving the States to the tune of Rs. 2,000 crores. Now the Eleventh Finance Commission has put a ceiling of 37.5 per cent. One wonders how these ratios are decided. Further in order to discourage extravagance some incentives for better financial management on the part of the States should be in-built in the system. In this context the observations

made by the Sarkaria Commission that the financial needs of such States are different must be kept in view. Already eight States (mostly BJP sympathisers) have come together under a common platform to demand a better financial deal from the Centre, insofar as the recommendations of the Eleventh Finance Commission are concerned.

Therefore, there is an urgent need first to restore to the States their original constitutional powers. Secondly, financial powers of the Planning Commission must be immediately curtailed. There should be an institutional set-up whereby the expenditure needs of the States are objectively assessed and fulfilled. There should be no subjectivity as far as possible in evaluating the financial needs of the States. To ensure financial autonomy to the States, objectivity is the need of the hour.

Finally, the States in turn should not hesitate to apply the same principle to the local self governments as per the 73rd and 74th Constitutional Amendment. Only then true federal relations would usher in India

TOWARDS A REVIEW OF THE INDIAN CONSTITUTION

The Perspective

The Indian Constitution was created under extremely difficult circumstances. In the initial phases of the work of the Constituent Assembly it was not clear whether the Muslim-majority areas of the country shall remain within the Indian Union or not. After formalisation of the Partition of the country, the Assembly worked under the shadow of the chaos and violence associated with this climactic event in the history of India. This, along with the prevailing uncertainty about the position of the princely states, created fears about the unity and stability of the country.

Under the circumstances, keeping the administrative machinery intact became the main concern of the makers of the constitution. This perhaps was the major reason why the Government of India Act of 1935, under which the colonial administration was functioning, became the basis of the constitution of free India. The concern with keeping the machinery of colonial administration intact is strongly reflected in the debates that took place on those parts of the constitution which went beyond the Act of 1935, especially the parts relating to fundamental rights and federal structures. In the debates on these aspects of the constitution, the members seem to be constantly worried that granting various freedoms and rights to citizens and the states of the Union may weaken the administrative apparatus inherited from the colonial administration. They seem to be constantly hedging the rights of the individuals and the states with a variety of provisos and limitations.

Besides the fear of loss of administrative control, the other major concern that informed the makers of the constitution was their firm belief that the Indian people needed to be guided towards economic and political maturity through the intervention of the state. This belief was partly a hangover of the arguments advanced by the British, who had always pretended that they were in India to provide a paternalistic administration since the people of India themselves were incapable of governing and improving themselves. The belief was reinforced by the socialist milieu of the times. Those were the times when almost everyone in the world believed that the economic and political development of nations was the responsibility of national bureaucracies.

This fear of the political and economic immaturity of the Indians led the makers of the constitution not only to provide constitutional protection to the colonial administrative machinery, but also to give extra-ordinary powers to the judiciary to oversee the functioning of the political legislatures. The makers of the constitution, it seems, were not sure that the legislatures chosen by the people of India, who they believed were largely illiterate and politically immature, would always act wisely. So they created a judiciary that is known to be more powerful than any other judiciary in the world.

The concern with keeping the colonial administrative machinery intact combined with the fear of the immaturity of the Indian people led to the emasculation of the political executive. The constitution first placed all initiative in the hands of the central government. And then the initiative of the central government was so hedged in by the sanctity accorded to the bureaucratic structures and the all-pervasive judicial overseeing that the political executive at the Centre itself became powerless to initiate anything substantive. The government that came into being under the constitution was thus a caricature of the colonial government; the colonial administrative machinery remained intact but the power and initiative that vested in the Viceroy and even the provincial governors to direct and purposely utilise this machinery evaporated.

The emasculation of the central political executive did not become too tangible till men like Patel and Nehru, who were looked upon as respected peers by the bureaucracy and judiciary, led the government. Though even for Nehru and Patel the struggle to defend political legislature and executive from judicial intervention began from almost the beginning. But, later Prime Ministers of India and their governments felt the lack of constitutional space for any political initiative at every step. The situation has deteriorated further and further, and today the political executive seems to have ceded much of its authority to the various bureaucratic and judicial structures created by the constitution. This is how India has come to be the proverbially soft state of the world.

The makers of the constitution also seem to have believed, along with the colonial British administrators, that India is not one nation, it is a conglomerate of numerous minorities placed alongside an uncaring and orthodoxy-ridden caste-Hindu majority. Therefore there was a deep concern to provide extraordinary constitutional protections for the minorities on the one hand, and on the other hand to give powers to the state to act in order to "reform" the Hindu majority. The provisions regarding the minorities were fortuitously kept under some control because the partition had made it imperative for the leaders of diverse minorities to be somewhat accommodative. But, the concern of reforming Hindu society through the intervention of the state remained strong.

Many of the concerns and beliefs that we have outlined above perhaps were inherent to the process that was adopted for making the constitution. The constituent assembly was chosen by an electorate that constituted less than one third of the adult population of India. The members of the assembly largely came from the section that was familiar and conversant with the functioning of the colonial administrative and legal machinery. At that time there were probably a few thousand Indians who had acquired such familiarity with the colonial apparatus, and the assembly was drawn mainly from these. The constituent assembly further left the detailed working out and drafting of the constitutional provisions to a select group of legal and administrative luminaries of the time. There were perhaps about 21 experts who directed all facets of the making of the constitution, ranking members of all significant committees of the constituent assembly were drawn from these. Of these 21 experts, 12 were lawyers, another 4 were career administrators, and one had been a medical doctor. At least 6 of this select group had never had any relation with the Congress, and several of them were known to be opposed to the spirit of the freedom movement. It seems that from

the beginning the making of the constitution was taken not as a political task, but as an exercise in legal and administrative expertise.[1]

The concerns that informed the making of the Indian constitution have become irrelevant today. Though there continue to be some fissiparous tendencies on the borders of India, the unity and integrity of India is hardly in doubt. The people of India have shown extraordinary political maturity and sagacity in most circumstances. And, the belief that national bureaucracies would guide the nations to economic and political strength has become outdated all over the world.

India today is strong enough to let the different constituents take the initiative in matters of political, social and economic development. The times, in fact, demand that such initiative is encouraged at all levels. Through the process of economic liberalisation, we are trying to squeeze some economic initiative out of the clutches of the bureaucratic machinery. But, in the absence of thoroughgoing changes in the colonial administrative and judicial arrangements enshrined in the Indian constitution, the political executive at the national and lower levels is likely to remain emasculated. And the initiative of the Indian people at all levels is likely to remain tied down in the maze of bureaucratic and legalistic rules and regulations. There is therefore an urgent need to review the constitution from this perspective.

In the following, we outline some of the fundamental changes that, we believe, are minimally required to restore some dynamism into the constitutional arrangements.

Preamble of the Constitution

A constitution is not meant to merely create the legislative, administrative and judicial structures and establish the necessary balance between these institutions. The larger objective of a constitution is to remind the nation of its civilisational genius, urges and seekings. By thus reminding the nation, a constitution motivates the people to make the necessary effort so that the genius of the nation may find a forceful expression and the urges and seekings may be abundantly fulfilled in the present day world. The legislative, administrative and judicial structures that a constitution creates are mere mechanisms to facilitate such expression and fulfilment of the national genius and

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[1] For details of the membership of the Constituent Assmebly, See, Granville Austin, *The Indian Constitution: The Cornerstone of a Nation*, OUP, New Delhi1966, paperback reprint, 1999, particularly p.10 and p.19-21. The primacy of professional expertise was emphasised in an unusually candid note sent by N. G. Ayyangar, one of the 21 key people involved in the making of the Constitution, to B. N. Rau, who as the constitutional advisor was at the centre of the exercise. As early as March 1947, before the Constituent Assembly began any serious work, Ayyangar wrote to Rau, "I believe ...in preliminary decisions on these issues (concerning the basic principles of the Constitution) being taken by small numbers of selected people including party chiefs *after* those issues have been investigated from all points of view with the help of informed people like you. ...Public opinion in such matters requires both a firm lead and skilled guidance." (Granville Austin, above, p.314) Incidentally, both Ayyangar and Rau were career administrators and their concern for keeping "public opinion" out of the expert task of making the constitution is indeed understandable.

urges. This mechanism of course has to be made powerful and appropriate to the seekings of the nation. But the main objective of the constitution is to define the seekings and to give expression to the national resolve to fulfil these.

The preamble of a constitution is the appropriate place for defining the civilisational genius, urges and seekings of a nation. Thus, the preamble of the modern Chinese constitution makes lofty references to the history, culture and geography of China. "China", the preamble begins, "is one of the countries with the longest histories in the world. The people of all nationalities in China have jointly created a splendid culture and have a glorious revolutionary tradition." And it states that, "Taiwan is part of the *sacred* territory of the People's Republic of China. It is the lofty duty of the entire Chinese people, including our compatriots in Taiwan, to accomplish the great task of reunifying the motherland."[2]

The Japanese, while promulgating a modern constitution for themselves in 1898, went to great lengths to relate their new constitution with the deepest past of Japan. The promulgation of the new constitution was made to coincide with the 2549th anniversary of the supposedly mythical founding of Japan. On the morning of that day, the Emperor presented himself in front of his imperial ancestors to assure them on oath that the new constitution was being promulgated to "the end of preserving the ancient form of government bequeathed by them to the country." Later, a Shinto priest delivered this message to the "myriad gods" at the palace shrine. And, special imperial messenger, who had been previously dispatched, reported the message to the Ise shrine and to the spirits of Emperor Jimmu, the founder of Japan, and Emperor Komei, father of the then Emperor Meiji. Only after thus informing the gods and the ancestors was the Constitution of Japan published for the world in a glittering secular ceremony held in the afternoon. And, even this secular ceremony was designed to convey and preserve the mythical significance of the promulgation of the constitution.[3]

The preamble of the Indian constitution, unfortunately, makes no such effort to relate itself to the civilisational history or the sacred geography of India. It makes no reference to the genius, urges or seekings of the Indian people. On the contrary, it refers loftily to the concepts of Justice, Liberty, Equality and Fraternity derived from the French revolution. These sentiments can raise no resonance in the hearts of the people of India, who are hardly expected to be acquainted with the history of Europe or to be moved by the European ideals.

If the Constitution of India is to strike a chord in the hearts of the people of India, the preamble must be amended to include appropriate references to the deepest urges of our civilisation. Much thought shall have to be given to the appropriate phrasing of this part of the Constitution. But it shall have to include words to the effect that: "The Republic of India is dedicated to the service of the *sanatana* civilisation of India. The Republic is founded to preserve and project the great glory of the *sanatana* Indian civilisation in the modern times. Keeping this objective in view the Republic shall persistently endeavour to further develop the unmatched spiritual and material

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[2] *The Constitution of the People's Republic of China*, adopted on December 4, 1982, Foreign Language Press, Beijing 1983, p.1 and 6.
[3] See, Carol Gluck, *Japan's Modern Myths: Ideology in the Late Meiji Period*, Princeton University Press, Princeton 1985, p.42-45.

capabilities of the Indian people. The Republic shall endeavour to ensure that all people of India get the opportunity to exercise these capabilities of theirs and thus to powerfully manifest their civilisational genius, urges and seekings."

Citizenship

Citizens constitute the basic units of a nation. Constitutions of different nations expect those who would be citizens to have a certain commitment to and faith in the civilisational genius, urges and seekings of the nation, and to acquire virtues appropriate to the spirit of the nation. Most nations impart training in citizenship and patriotism to their young in diverse ways.

Soon after the promulgation of the Constitution in 1889, the Emperor of Japan issued a Rescript on Education, which sought to lay down the personal and moral virtues expected of a citizen of Japan. Issued in 1890 after much deliberation and extremely careful drafting, the Imperial rescript was soon enshrined at the core of moral education. Bowing before the Rescript and ceremonially reading it out became part of the morning ritual in the schools. The Rescript arouse such interest and devotion amongst the people of Japan that by 1940 there were as many as 595 book-length commentaries interpreting and explaining its intentionally terse and heavily meaning-laden phrases.[4]

Meiji Japan, of course, pursued the task of patriotism training, nation building and inculcation of virtue extremely vigorously. Other nations however do not neglect the task. The Constitution of India is probably unique in not expecting any particularly

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[4] See, Carol Gluck, 1985, cited earlier, p.120-7 and p.146-8. The official translation of the Imperial Rescript reproduced by Gluck (p.121) reads:

Know ye, Our Subjects:

Our imperial Ancestors have founded Our Empire on a basis broad and everlasting and have deeply and firmly planted virtue; Our subjects ever united in loyalty and filial piety have from generation to generation illustrated the beauty thereof. This is the glory of the fundamental character of Our Empire, and herein also lies the source of Our education. Ye, Our subjects, be filial to your parents, affectionate to your brothers and sisters; as husbands and wives be harmonious, as friends true; bear yourself in modesty and moderation; extend your benevolence to all; pursue learning and cultivate arts, and thereby develop intellectual faculties and perfect moral powers; furthermore advance public good and promote common interests; always respect the Constitution and observe the laws; should emergency arise, offer yourselves courageously to the State; and thus guard and maintain the prosperity of Our Imperial Throne coeval with heaven and earth. So shall ye not only be Our good and faithful subjects, but render illustrious the best traditions of your forefathers.

The Way here set forth is indeed the teaching bequeathed by Our Imperial Ancestors, to be observed alike by Their Descendants and the subjects, infallible for all ages and true in all places. It is our wish to lay it to heart in all reverence, in common with you, Our subjects, that we may all thus attain to the same virtue.

The 30th day of the 10th month of the 23rd year of Meiji (1890).

Indian commitment or virtue from the citizens. The main clause regarding citizenship in the Constitution (Article 5(c)) laid down that every person who had been ordinarily resident in India for not less than five years immediately preceding the commencement of the Constitution was entitled to be a citizen of India. According to this clause almost all of the British persons in India at the time of Independence could have chosen, if they so wished, to stay on as citizens of Independent India, and probably continued to occupy the administrative and other positions they were holding.

Excepting for providing such guarantees of citizenship to various classes of persons, the Constitution makes little provision regarding citizenship. Most of the matters concerning citizenship are left to the discretion of the parliament and future judicial interpretations. The chapter on fundamental duties (Article 51A) introduced through the much maligned 42nd amendment of 1976 does lay down some expectations from the citizens, but these are in the nature of common platitudes and hardly anyone seems to pay any attention to these duties.

The citizenship provisions of the Constitution need to be tightened up so that being a citizen of India becomes both a high honour and a deep responsibility. We can probably add words to the effect that, "It is expected of the citizens of India that they shall have faith and loyalty towards the *sanatana* civilisation of India and shall be ever ready to sacrifice all for defending the glory and greatness of India and the Indian civilisation." The exact virtues to be defined and the words to be used shall of course have to be selected after much thought and discussion.

But it is not merely a matter of adding a few high-sounding words to the constitution. Having made the enabling provisions in the Constitution, we must introduce proper citizenship and patriotism training in our schools, so that the future citizens begin to realise the glory and the responsibility of being an Indian.

States of the Union

Just as the Constitution makes little attempt to define the specific virtue of being an Indian citizen, similarly it gives little recognition to the specific identity of the Indian states that together constitute the Union. As far as the Constitution is concerned the States of India are such amorphous entities that the Parliament has been given the right to increase or diminish the area of a State, alter its boundaries or change its name. And for doing all this, the Parliament needs to only ascertain the views of the legislatures of the concerned State or States; their consent to the changes is not necessary. The Parliament can effect such far-reaching changes in the boundaries and names of the States under its normal legislative powers; such changes do not even have the sanctity of a constitutional amendment. (Articles 3 and 4).

At the time the Constitution was promulgated, it was perhaps necessary for the Parliament to be given such overriding powers concerning the States. After the princely states were merged into the Union, reorganisation of state boundaries drawn by the colonial administration and renaming of many states had become essential to

accommodate the legitimate regional identities and aspirations. But, there is no justification for the Parliament to retain this untrammelled right to reorganise and rename States after fifty years of independence. There is a need to seriously review these provisions.

The States of India are not mere administrative units. Indian civilisation has manifested in diverse linguistic, historic, literary and cultural forms in the diverse regions of India. One of the greatest achievements of the Indian civilisation is in having kept these diverse forms together within the umbrella of an overarching and essentially unified Indian-ness. Therefore the greater glory of Indian civilisation is best sought in the further development and blossoming of the diverse forms in which it manifests in the different regions of India.

We should therefore now endeavour to provide constitutional stability to the boundaries of the States of India so that their specific identity receives formal recognition. The responsibility of accommodating sub-regional cultural or linguistic aspirations of groups within the States can then be legitimately left to the States themselves. In this context it should be recalled that Mahatma Gandhi, had always insisted that the boundaries of the Indian States are not a matter of mere administrative convenience; there existed natural cultural boundaries, which he felt were best determined on a linguistic basis. And, in the first Constitution of the Indian National Congress that he drafted in 1920, he provided a list of Provinces on the basis of language.[5] How can we keep such natural boundaries administratively fluid after fifty years of independent functioning?

There are several provisions in the Constitutions that regulate the relations between the Union and the States, and most of these tend to vest the Union with overriding powers. Articles 249 to 254 vest the Union with the power to legislate on subjects in the States list under various circumstances. Article 256 and 257 give the Union executive the power to issue directions to the States on various subjects. Articles 268 to 280 make provisions for the distribution of resources between the Union and the States, and these provisions establish an explicit ascendancy of the Union over the major sources of revenue. All these and related provisions need to be reviewed, so that the States may acquire the greatest possible responsibility in legislative, judicial, administrative and fiscal matters.

The list of subjects in the so-called Union List, State List and Concurrent List also need to be reviewed. These lists originated in the Government of India Act of 1935. The British delegated certain subjects to the States, and then circumscribed the responsibility of the States by creating several provisions that vested in the Union the authority to intervene in these matters. In addition, they created a Concurrent List of subjects in which the responsibility of the States was made explicitly subject to the higher control and supervision of the Union.

We should arrive at a clear assessment of what issues and subjects may be handled by the States, and then the entire responsibility for these should be placed on them. Central intervention in such matters should then be restricted only in case of clear and imminent emergency. Duality of responsibility in most matters, as is the case today,

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[5] *The Collected Works of Mahatma Gandhi*, The Publication Division, Government of India, vol.19, Delhi 1966, p.191.

seems only to breed irresponsibility all around, with the States blaming the Union for their failures and the Union doing likewise.

Making the States thus clearly and solely responsible for matters that fall within their domain shall help the States contribute effectively to the development of the Indian civilisation in its diverse forms. This shall also greatly reduce the burden on the Union executive, and thus give it the freedom to energetically pursue the larger national and international objectives that necessarily fall within the domain of the Union. Vesting the States with such clear and well-defined responsibility is particularly apt in the current international situation, when there is intense pressure on the Union to cede larger and larger areas of national sovereignty to multilateral control, supervision and direction. With the States becoming solely responsible for matters falling within their domain, the Union shall be forced to effectively consult the States before opening any new area of national economy and polity to global access. This shall help the Union withstand pressure in multilateral negotiations. For this strategy to succeed, it is important that the States should have no power to deal directly with foreign or international agencies. States ought to be autonomous within India, but their economic or other dealings with the rest of the world must take place only through the Union. The current tendency of allowing the States to seek and negotiate foreign collaborations directly needs to be curbed immediately.

Provisions Concerning the Minorities

Every self-confident nation makes provisions for the protection of minority groups. Such protection is accorded so that the diverse cultural, linguistic and other capabilities of minority groups may contribute to and thus enrich the national mainstream, which naturally is constituted of the majority. Section 29 of the Constitution that guarantees protection of the minorities, however, almost invites diverse groups to claim special rights in the name of their distinct language, script or culture. The other provision regarding minorities, Article 30, gives the minorities the right to establish and administer educational institutions of their choice and thus creates an invidious distinction against the majority. The right to establish and administer educational institutions of their choice is a natural right of all communities, whether constituting a minority or a majority. The article does not in fact give any special right to the minorities, but takes away a valuable natural right from the majority.

These two articles together have created a premium upon various groups to break away from the national mainstream. Groups that would have been happy and proud of being distinct yet inseparable parts of the mainstream have therefore begun to discover and claim separate identities. These constitutional provisions, instead of providing protection to the minorities, have had the effect of creating new minorities and vitiating the integrity and depth of the national mainstream.

There is an urgent need to seriously review both these provisions. The minorities of course must be provided guarantees of protection. But such guarantees must be such

as not to create pressures on diverse groups to separate from the mainstream. Article 29 certainly needs redrafting. And, the protection of Article 30 needs to be equitably extended to all people of India.

Provisions Concerning Freedom of Religion

Article 25 grants "freedom of conscience and the right freely to profess, practise and propagate religion." Freedom to profess and practice the religion of their choice is of course a natural right of all citizens in a secular state. But, the freedom to "propagate" that has been included in this clause is highly unusual. No secular state guarantees the freedom to propagate and convert people from other faiths. This freedom has been fortuitously circumscribed by the judicial interpretations of the term "propagate", which have held that "propagation" does not mean "conversion". But the phrasing of the original clause leaves much scope for intense proselytising activity on behalf of various religions and sects.

The second clause of the Article makes two provisos to the freedom of religion. The first proviso gives the State the authority to regulate or restrict "secular activities" associated with religious practice, and the second proviso vests in the State the power to make laws for "social welfare and reform" of Hindu religious institutions.

The first of these provisos is applicable to all religions, but in practice has been used to control and regulate the functioning of only the Hindu institutions. The second proviso is specifically aimed at Hindus and their institutions alone. Judicial interpretations of these provisos have so extended the definition of "secular activities associated with religious practice" as to allow the State to take over control of all aspects of the Hindu religious institutions, and directly interfere with the established rituals and customs. In several States, especially in the South, under the protection of these provisos, temple properties have been frittered away, temple incomes are being applied towards the salaries of highly paid government officers, and temples are being run more or less as departments of the State government. The States do even claim and exercise the right of not only prescribing the qualifications and conditions of service of the priests, but also the language and form of the ritual.

This certainly amounts to invidious interference in the religious affairs of the majority of the Indian people. Religion is at the core of Indian civilisation. Provisions concerning religious freedom in the Indian constitution should therefore be the ideal for the world. India ought not to restrict or control the religious practice of any group, whether that of the majority or minority. The first clause of Article 25 already makes the freedom of religious practice subject to public order, morality and health. The only other proviso we need to add is that such practice may not interfere with the security and integrity of the nation; and that the religious affairs and religious institutions of no religion in India may be subject to foreign control or domination.[6] The right to freedom of religious practice ought not to be circumscribed by any other

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[6] Incidentally, the 1982 Constitution of the People's Republic of China, cited earlier, makes just such provisions regarding religious freedom. See Article 36, p.32.

provisos. People of India ought to be left free to organise, institutionalise and practise their religious affairs themselves, neither the State in India nor any foreign agencies or bodies need have any say in it.

The current provisions of Article 25 instead of granting religious freedom have the effect of taking away the right of the Hindus to run their own religious institutions and affairs. These also give the State the right to aggressively interfere with the custom, rituals and beliefs of the Hindus in the name of social reform. This article therefore needs to be reviewed seriously.

Judiciary and Administration

The Constitution of India is perhaps the longest constitution in the world. This extraordinary length of the Indian constitution arises in large part from the detailed provisions it makes regarding the public services and the Judiciary. The Constitution records in great detail the structure of administrative and judicial institutions, and the rights, privileges and also the salaries and allowances of public and judicial officers at various levels. Most democratic constitutions of the world record only the fundamental principles of governance, and leave such detailed working out of the administrative and judicial arrangements to the wisdom of the Parliaments. Such institutions are almost always created by legislative acts of Parliaments, not by constitutional fiats.

The leaders of the Constituent Assembly deliberately chose to include detailed administrative and judicial arrangements in the Constitution of India. One reason for this decision was that in the prevailing circumstances, the leading founding fathers were keen to retain intact the administrative and judicial arrangements of the colonial administration. And therefore they found it necessary and expedient to provide constitutional guarantees to the high administrative and judicial officers that their domain of authority as well as their salaries, perquisites and privileges would remain unaltered in independent India. But perhaps even a more pressing reason was that many of the leading founding fathers had little faith in the wisdom and maturity of the people of India and the Parliaments chosen by them. They were afraid that Parliaments might chose to make drastic alterations in the administrative and judicial structures of the colonial administration, which many of them believed were ideal for the governance of India.

Dr. Ambedkar, known as the father of the Indian Constitution, expressed his fears openly, declaring that the details of administrative and judicial arrangements must be enshrined in the Constitution because 'it is perfectly possible to pervert the Constitution without changing its form by merely changing the form of adminstration'.[7] Dr. Ambedkar in fact was of the view that independent India does not need a new constitution, the Government of India Act of 1935 could itself form the

[7] *Constituent Assembly Debates*, VII, i.38.

Constitution of India.[8] Eventually, as we have mentioned earlier, the Act of 1935 did become the basis of the Constitution of India.

The extraordinary sanctity provided to the administrative and judicial structures in the constitutional arrangement has served to severely restrict the initiative and authority of the Indian people and their elected representatives. That these arrangements were going to so restrict the initiative of the political authorities in carrying out any fundamental changes in the social milieu left behind by the British became clear at the very beginning. Several judgements of the various High Courts and the Supreme Court in the very first year of the coming into force of the Constitution challenged the authority of the Parliament and State Legislatures at a level that leaders of the stature of Patel and Nehru began to feel frustrated. And they felt the need to effect the first amendment of the Constitution to get around judicial pronouncements rather soon. The process to carry out the amendment was initiated in October 1950 and the amendment was passed by the provisional Parliament in May 1951, even before the first election under the new Constitution was held.[9]

It is possible to read the constitutional history of India as a tug of war for supremacy between the judiciary and the political authority, as a meticulous scholar of Indian Constitution seems to do in a recent study of the working of the Constitution during the first four decades.[10] This tug of war gave rise to traumatic events in the current history of the nation. But more than anything else it has diverted the attention and energies of the nation from the primary task of nation-building to legalistic debates that have occupied the centre stage in the life of the nation.

The same level of controversy has not arisen about the constitutionally sanctified public services. But, clothed with constitutional protection, the administrative services, have continuously expanded their areas of influence, and curbed the initiative of the people at all levels. Only recently, under the influence of the global tilt towards free-market principles, has some effort been begun to lessen the rigours of the all-encompassing bureaucratic apparatus.

Whatever the reasons of the Constituent Assembly for enshrining the colonial administration and judiciary in the Constitution of free India, these arrangements cannot be allowed to be permanent. It is probably now high time to begin altering these arrangements and making them appropriate to the genius and seekings of the Indian people. As a first step towards this restructuring of the administrative and judicial apparatus of India, we need to bring these arrangements out of the Constitution and recreate these through legislative acts of the Parliament and the State Legislatures, as is done everywhere in the world.

We need to remove the constitutional protection provided to these arrangements, even if we chose to keep the arrangements entirely intact and unaltered at this stage. Such changes in the Constitution shall probably change nothing immediately, but it shall restore the dynamism to the development of administrative and judicial structures, and open the way for far-reaching changes in the future.

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[8] Speech to the Scheduled Caste Federation, May 6, 1945. Quoted from Austin, cited earlier, p.3.
[9] See, Granville Austin, *Working a Democratic Constitution: The Indian Experience*, OUP Delhi, 1999, p. 40-50.
[10] Granville Austin, above.

Sources for Rethinking the Constitution

The constitutional changes that we have suggested above are the minimal changes that we need to undertake to alter the colonial ways and structures that we inherited. Even after all these and similar other changes the resulting Constitution shall remain European in content and spirit; its basic structures shall remain unaltered. But it shall at least be an indigenously adapted European arrangement, which shall give due respect to the identity, dignity and initiative of the Indian people and their civilisation.

In order to bring the Constitution in consonance with the Indian sensibilities and the classical Indian ways of governance, we shall have to draft a new Constitution. That exercise is probably far in the future. Meanwhile we can certainly carry out an intensive study to the various sources that may be of help in moving in that direction.

One of the major sources of such rethinking about the Indian Constitution is the life and works of Mahatma Gandhi. Indian freedom movement under the leadership of Mahatma Gandhi was aimed at restoring initiative in all matters to the people of India and to the basic political and economic unit of *grama* around which they were organised. Mahatma Gandhi was not much enamoured of the European and socialist ideal of state taking the responsibility for social and economic revolution. He preferred to leave the initiative in such matters with the people and their *gramas*. Mahatma Gandhi gave much consideration to how the *grama* was to be revived and restored to its central position in the Indian polity. It is indeed tragic that the leading founding fathers, entrusted with the task of drafting a Constitution that was to formalise the freedom won under the leadership of the Mahatma, gave so little importance to *gramas* and their *panchayats*. The first draft of the Constitution did not even include the term *grama* or *panchayat*. And, when several members vociferously objected to the omission, a single clause desiring the States to "take steps to organise village panchayats and endow them with such authority as may be necessary to enable them to function as units of self-government" (Article 40) was included amongst the 'Directive Principles of State Policy'.[11]

The Gandhian thought on polity was to a large extent derived from the basic principles of Indian civilisation concerning polity and governance. There is a vast corpus of classical Indian literature on these issues. And this literature is unanimous on the basic principles of political and social organisation.

In addition to the Gandhian and classical Indian thought, the experience of other nations of the world can also be of help in rethinking about the Indian Constitution. Many other countries of the world during the last couple of centuries have tried to build modern nations through the constitutional process. Some of these, like Japan in 1890, created a modern constitution with the deliberate intention of protecting themselves from the colonial influences that had subdued most nations around them. Other countries, like China in the 1980's, have created constitutions to celebrate the revival of their civilisational greatness at the end of a couple of centuries of submission to alien civilisations. It shall be of help to look into these various

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[11] For the history of this article in the Constituent Assembly, See, Dharampal, *Panchayat Raj as the Baisis of Indian Polity: An Exploration into the Proceedings of the Constituent Assembly*, AVARD, New Delhi 1962.

constitutions. Within Europe, countries like Germany have created modern constitutional arrangements that continue to protect the traditionally high status and role of the local communities in the functioning of the polity. Scholars like Solzhenitsyn have also meditated on the constitutional arrangements that are likely to suit the traditional community-based organisation of Russia.

We need to study and comprehensively examine these sources to begin moving towards the creation of a Constitution that shall be Indian in content and spirit and express the national resolve to restore the civilisational glory of India in the modern times. But the minimal changes that we have suggested earlier in this paper and many other similar changes shall have to be undertaken immediately, to open the path for this larger restructuring.

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Justification for Constitutional Review

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Constitution of a State is in fact a life-line and a guiding force for survival and governance. It is a supreme document. It sustains unity, security and politico-socio-eco-development of a nation. The role of constitution becomes more significant particularly in a federal polity where socio-cultural, religious diverties exist and where both territorial unity and social harmony become complementary to each other.

Same is true in case of Indian Constitution. The Constitution of India - as a constitutional document is a master piece with not many parallels. During the last five decades, it has become instrument in establishment of positive atmosphere condusive to the growth of democracy, social justice and development.

But in no way a constitution is God made. If the time demands it can be reviewed. If need be it can be changed/altered/amended/repealed, so that it stands the test of the time.

Hence no one can stop a nation to review her constitutions as we live in a dynamic world, which is fast changing with the change in all socio-politic-Eco and cultural life. A debate is, therefore, going on about whether there is a genuine need of constitution review in one of the biggest democracy of the world. The B.J.P. led N.D.A. pleading for the Review of constitution and had raised this issue even during last Election by highlighting the dangers of instability. It tried to expedite this process just after getting absolute majority in the last Election. Even President of India, while addressing

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the joint session of the two houses of Parliament on October 25, last year refered his Government resolution for a fresh look on the Constitution of India in order to prevent political instability. The National Commission to Review the working of Constitution of India has, however, been constituted with the most eminant personalities of the time, in June, 2000. But B.J.P. leaders tried to announce the changes which they are manifesting even before the Consttitution of N.C.R.C. This created doubts in the minds of the people about their intentions. The former Chief Justice of India A.M. Abmadi pointed out "In the life of a country's constitution, 50 years is not a sufficient long period to call for its replacement. If the idea is to review the constitution in its entitity, I am afraid it is pre-mature. But if the objective is to review certain grey areas only that may be different matter. Refering to the review of the Constitution move Professor C.P. Bhambri said :

> "It is a trap being laid by the B.J.P. and they will be successful in delightimising the constitution and raising in the minds of the people doubts about it."

Professor T.K. Oommen pointed out :

> "The B.J.P. motive is to convince the people that cultural nationalism will be more effective than the cultural pluralism endorsed by the constitution. Through the review they can communicate to the masses that mhere is an alternative way of building the nation."

Professor Dipankar Gupta said :

"In normal circumstances, a review does not really call

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for such a hue and cry. But in this case, it is not in the national interest - it is motivated by sectional party interests."

Mr. A.K. Antony ~~Even the President of India K.R. Narayanan~~ pointed out that "....Parliamentary democracy is best suited for the country where economic inequality between caste and religious communities persisted and where regional and language contradictions existed. While stressing that our recent experience of instability in Government is not sufficient reason to x discard parliamentary system in favour of the presidential or any other system, he Mr. Sita Ram Yechury of the C.P.I. - M said :

"The B.J.P. is trying to undermine the secular foundations of the Constitution. They have a theoretic Hindu Rashtra in mind and the RSS ub fact feels that the present constitution is un-Hindu."

The people and the political parties thus warned them not to alter the lofty ideals secularism, Democracy, Social Justice etc. etc. enshrined in the constitution. The N.D.A. leadership then announced that the basic features of the constitution shall not be tempered. The secularists and federalists, however, want to retain the existing constitution so that it should not become a pawn in the hands of Rightiests forces. They believe that the constitution contains the high ideals of socialism, secularism and integerity of a nation. Equality, social justice etc. Those who pleade for review stress that it is essential in the light of 50 years experiences to cure certain evils cropped up during this period such as :-

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1. Highly Centralised Constitution
   - To make it a true and genuine federal with more powers - financial and otherwise - to the States.

2. Neither Parliament nor the State Vidan Sabhas doing with any degree of competence or commitment what they are primarily meant to do.

3. Most of elected members are neither trained in law-making nor do they seem to have an inclianation to develop the necessary knowledge and competence in their profession.

4. Instability and frequent mid-term polls - because of un-constructive vote of confidence.

5. Need for greater accountability.

6. Constructive vote of confidence.

7. Fractured verdict - i.e. electorates failure to give a clear verdict in favour of one political party.

8. Decline of party discipline.

9. Horse trading in parliament.

10. Faulty electoral system - lack of state funding of elections, sharpening of the anti-defection law, auditing of the accounts of political parties and rules of ensuring inner party democracy in political parties.

11. No five-years fix term for legislatures and fixed term for L.S. if no alternative Government is formed, after the passage of vote of no confidence.

12. Misuse of Governor Office and Art 356.

13. Lack of majority of party in power in Rajaya Sabha and

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its impacts on the working of Central Government i.e. stopping a bill passed by L.S.

14. The status of the caretaker Government.

15. Disregarding the presidential advice for convening the Rajya Sabha because the President can convene Parliament only on the advice of Government.

16. No penality for repeated disruptions of Legislative procedure.

17. Checks against imposition of National Emergency.

18. Criminalisation of Politics.

19. Checks against social and political violence including terrorism.

20. Corruption in High Offices.

21. Transfering part of provisions from part IV to Part III of the Constitution.

22. Parliamentary VS presidential form of system.

23. Reservation policy and decline of administrative efficiency.

24. Lack of cheaper, quicker, transparent dispersment of justice.

NDA leaders repeatedly stressed that certain aspects of the Indian Constitution and constitutional practices call for a healthy democratic debates and if possible a review also. We do agree that there is no harm of their critical examination in the light of experience of last five decades. But certain issues they raised recently have already discussed

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and thoroughly debated in the Consembly of India and rejected. For example parliamentary VS Presidential system and giving emphasis to stability over accountability etc. etc.

They do not understand that most of these evils are administrative problems created by mis-government and mis-management and indiscipled political parties. The parties are not behaving in a healthy way. The constitution of India and the constitutional process have been twisted by the political bosses and parties to suit their partisan ends from the very beginning.

Some of these evil can be occured by bringing about new amendments in constitution and taking up of Administrative ~~machinary~~ reformes. If American Constitution drafted and adopted more than 200 years back, in the socio-Eco. back round of an non industrial, non neuclear, agricultural society has worked well without resort to review and by amendments (26) and almost always to confer greater liberal and eco. rights to its citizen. Why not in Indian constitution.

If an unwritten British Constitution is working well what is wrong with our nation. What is wrong in the working of our democracy and constitution, which cannot be rectified by the available process of change. President K.R. Narayanan rightly said :

"Today - we have to consider whether it is the Constitution that has failed us or whether it is we who have failed the Constitution."

Most of these evils would have been set right had the central Government adopted and implimented the Sarkaria

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Commission Report. The Sarkaria Commission had already made thorough study and review these constitutional evils before making concrete recommendation. But unfortunately its recommendation have not yet been accepted and implemented. The Commission also found out that there was no need to even amend the constitution as it already had provisions to allow the sufficient freedom in their sphere of constitutional

It is not the fault of constitution, which is sacred document and drafted by C.A consisting of the most eminent intellectual of that time. Constitution or review process cannot change human nature, nor create saints out of thonies. For changing the altitude, outlook and values of the people, we have to tap sources other than law and constitution. Need for development of good/healthy tradition and constitutional convention is much more important than the review of the constitution. No constitutional change is required to reform party system. Sarkaria Commission

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Art 370 circumstances who to remove

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President's Two Speeches

The following are two of President K.R. Narayanan's latest speeches—the Republic Day-eve address to the nation (on January 25, 2000) and the address to the Central Hall of Parliament to mark the Golden Jubilee of our Republic and Constitution (on January 27, 2000).

An Occasion for Honest Self-Analysis

On the eve of the Golden Jubilee of our Republic I have the privilege to extend to all Indians living in India or abroad, my heartiest greetings and felicitations. I also send my greetings to the brave personnel of our armed forces who stand guard to defend the untiy and territorial integrity of the nation. And I pay my homage to the memory of those who laid down their lives in the defence of the Republic from external aggression and intermittent terrorist attacks across the border. On this solemn occasion, our thoughts go back to the Father of the Nation who lived and died for the freedom and unity of our nation, and to the countless men and women who followed him into the arena and faced immense hardships and sufferings in the heroic struggle for independence. Our thoughts also go back to the founding fathers of our Constitution whose far-sighted vision and arduous labours gave us a Constitution which enshrined the traditional concepts of liberty, equality and fraternity adding to them the concept of Justice—social, economic and political—and declaring our nation a Sovereign Democratic Republic.

The word 'Republic' is no ordinary word. It is a commitment to the effect that, in our State, supreme power is exercised not by some remote monarch but by the *people*. It is an affirmation that the wielder of power in India—the *adhinayaka*—is the great aggregation of our people as a whole, whom Rabindranath Tagore has immortalised as the *jana-gana*. Let us, on this anniversary, hail that proclamation and commitment. Let us celebrate the exceptional status we enjoy, the status of being the world's largest democracy. Given the chequered career of democracies elsewhere, we can be grateful to be the citizens of this Republic; where an individual, be he ever so high, the Constitution and the laws made by the people remain higher than him; and where the Executive remains accountable to the Parliament.

Thanks to our early and visionary support to science and technology, we have made advances in that field as would excite human imagination anywhere; thanks to our *kisans* and *mazdoors* and entrepreneurs the wheels of our agriculture, commerce and industry turn steadily with the world; and thanks, above all, to the striving of our agricultural communities, our granaries remain full. From the 1970s when our GDP grew at only around 3.5 per cent per annum, the economic growth rate has accelerated to around 6.5 per cent. It is not generally realised that in the 1990s, India has become one of the 10 fastest growing economies in the world. We can be justly proud of the abundance of our entrepreneurial ability, the high levels of domestic private savings, and also of the high level of managerial and technical skills. All these have enabled our economic reforms to have a solid and a stable base for further and more rapid growth. This is a day when we take pride in our achievements, but it must surely also be a day of honest self-analysis and self-questioning about where we, as a people and a society, are headed?

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FIFTY years into our life in the Republic we find that Justice—social, economic and political—remains an unrealised dream for millions of our fellow citizens. The benfits of our economic growth are yet to reach them. We have one of the world's largest reservoirs of technical personnel, but also the world's largest number of illiterates; the world's largest middle class, but also the largest number of people below the poverty line, and the largest number of children suffering from malnutrition. Our giant factories rise from out of squalor; our satellites shoot up from the midst of the hovels of the poor. Not surprisingly, there is sullen resentment among the masses against their condition errupting often in violent forms in several parts of the country. Tragically, the growth in our economy has not been uniform. It has been accompanied by great regional and social inequalities. Many a social upheaval can be traced to the neglect of the lowest tier of society, whose discontent moves towards the path of violence. Dalits and tribals are the worst affected by all this. In parts of rural India forms of sadism seem to be earmarked for Dalit women. From the time of Draupadi, our womenfolk had been subjected to public disrobing and

Kar Seva of the Indian Constitution?

Reflections on Proposals for Review of the Constitution

The review of the Constitution that has been instituted is a carefully planned political exercise. The oligarchic and patriarchal composition of the review commission is replete with authority figures and carefully excludes any imaginative voice from communities of social and human rights activism and independent scholars.

UPENDRA BAXI

I
Imperial Ambitions

The desire to fiddle with the Constitution even as India burns is a perennial malady of the Indian ruling classes. 'Little men' (mostly and occasionally, women) 'dressed in brief authority' find the height of political potency in grandiose plans to change the Constitution. Political leadership in India revels in endeavours for massive changes *in*, and *of*, the Constitution.

The distinction is important. Changes *in* the Constitution are appropriately called amendments, which Article 368, the amending article justifiably allows. Changes *of* Constitution are not allowed any scope by the present Indian constitutionalism, which denies legitimacy for its profound subversion.

Even though far reaching, Pandit Nehru's First, and Indira Gandhi's Forty Second, amendment, did not amount to the creation of a wholly new constitution. And, importantly, these changes remain subject to a declaration of invalidity, under the 1973 *Kesvananda Bharati*'s extraordinary (but fully justified) assertion of judicial power to save the basic structure and essential features of the Indian Constitution.

The present review is, indeed, a carefully planned political exercise. It has no specific terms of review, save the February cabinet resolution[1] that conceals the fact that the review commission is a miniaturised constituent assembly. Its oligarchic and patriarchal composition is replete with authority figures[2] and carefully excludes any imaginative voice from communities of social and human rights activism and independent scholars. And a regime apparently committed to legislative reservations for women is here unable to go beyond the worst form of tokenism. The only stated limitation is that the review shall not affect the basic structure. In reality, the very notion of a comprehensive review is insensible outside the attempt at political reworking of the essential features of the basic structure of the Constitution.

Underlying the political logic must be a desire to reconstruct the basic structure doctrine. *Kesvananda*,[3] and its progeny especially *Bommai*,[4] insist that 'secularism' is an essential feature of the basic structure beyond amendment. True, the Preamble of the Constitution did not announce India as a 'secular' sovereign democratic republic. True, also, this change was brought about by the infamous 42nd amendment. But these are at best *partial* truths. The full truth is that the Supreme Court insists that ours is a secular constitution and has consistently defined the limits of state power in terms of constitutional secularism. No act of imagination is required to decipher that the review is a way of arranging political time and circumstance for major changes in the meaning of constitutional secularism, since the BJP attacks 'pseudo-secularism' that does not adequately protect and promote the rights of the majority 'Hindu' communities.

Similarly, 'socialism' as an essential feature of the basic structure of the Constitution remains a 'smoking gun', as it were, because it entitles social and human rights activist communities to invoke its rolled-up ideals to interrogate policies of economic liberalisation. The three Ds of contemporary economic globalisation – de-nationalisation, dis-investment and deregulation – are frequently challenged on grounds animated by 'socialism.' Although courts rarely strike down executive or legislative measures promoting economic rationalism of free global markets, the managers and agents of the Indian globalisation processes would like to effect a structural adjustment of judicial activism. The review is animated by the conviction that all dominant political parties would support the deletion of socialism as an essential feature of the basic structure.

In this, and related, respects the reiteration that the review is subject to the basic structure strains public credibility and generates anxiety among active citizenry. Nor is the much-flaunted political arithmetic (the improbability of marshalling two-thirds majority for substantial changes) solacing. If the review is unlikely to produce desired results, why undertake it in the first place? On any reckoning, it is designed to create eventual political space for manoeuvre. Nor, further, does the technocratic composition of the commission (most members are judges or lawyers) allay these concerns. Their political naivety or commitment, as the case may be, portends a constitutional catastrophe in the making.

II
What Is Wrong with the Present Constitution?

This question needs to be refined as: What is wrong with the present Constitution that may not be rectified by the already available process of changes *in* the Constitution? To put the question *this* way is, indeed, to answer it! After all, the

Two day Seminar on Indian Constitution

(20-21 July 2000)

Resume of Presidential Address of Dr. Jasbir Singh Ahluwalia

Vice-Chancellor

Delivered on 20th July

Welcoming the Chief Guest, Hon'ble Sardar Parkash Singh Badal and other distinguished guests, delegates from Northern India Universities, other Participants and the University Faculties, Dr. Jasbir Singh Ahluwalia, Vice-Chancellor, Punjabi University, Patiala, said that the purpose of this two-day Seminar was to stimulate creative, positive debate on appraisal of Indian Constitution in federal perspective and also to provide academic inputs of Constitutional, Social, Economic and Cultural nature towards preparation of the Punjabi's viewpoint before the National Commission set up by Government of India for review of India Constitution.

Dr. Ahluwalia said that federalization of national polity was essential from four angles; coordinative and complementary strengthening of the Centre and the States; imperatives of plural nature of Indian society; empowerment of the people going beyond their mere enfranchisement, and the challenges of globalization.

In this context Dr Jasbir Singh Ahluwalia observed that the long-cherished myth that unity of India could be reinforced by unitary polity, erected on homogenized social base, stands exploded; realization has dawned that socio-economic tensions and ethno-religious confrontations that often take on militant, fundamentalist - secessionist forms, can be best resolved only in a true federal, set-up. Secondly the plural, composite character of Indian society-particularly when the minorities of different types have become self - conscious about their respective identities - necessitates recasting of Indian Constitution to make it reflective of this historical reality. Thirdly, constitutionally prescribed devolution and decentralization of power, authority and resources is necessary for the empowerment of the people at the grass-roots level. Fourthly, globalization is leading to changing equations between economic zones and political divisions; this process impinges upon the Centre-States relations which can not remain static.

Putting the problem in perspective, Dr Ahluwalia emphasized that the unitary distortions of Indian Constitution during the last 50 years should be rolled back in favor of a multi-focal federal polity; the present subordinate relationship of the States with the Centre should be changed into a coordinate relationship of co-sharing power, authority and resources leading to real coordinative federalism.

Dr. Ahluwalia made three bold pleas in his presidential address. He pleaded for incorporating the expression "federal" in the Preamble to the Constitution. Responding to the imperatives of the plural Indian Society and regional concerns, the Rajya Sabha, being the Council of States, should be reconstituted with all the States having equal representation therein, irrespective of the factors of size and population. Further, to make parliamentary democracy really substantive, the recognized political parties should have in the State legislatures and the Lok Sabha institutional representation in proportion to the votes polled by them, besides their successful individual candidates in the elections.

power to make preventive detention constitutionally legitimate will, of course, further unfold as the review proceeds.[6]

Outside this, the stability plank is all about finding ways of preventing mid-term polls, expressed through the notion of a 'fixed term for the Lok Sabha'. That term is already specified in the constitution! But it needs to be 're-fixed' now in the light of the frequent fall of union governments through acts of no-confidence votes, at times deciding their fate by a hair's breadth. The idea making the rounds is that only 'constructive' votes of confidence may be allowed so that if no alternative governance formation is possible the existing regime continues to rule for full five years.

Suddenly, the German constitutional example is discovered and pressed into service. That example is, of course, not so limited as the travails of chancellor Kohl, and his party, reveal to full public view. I will not dilate on this sudden stroke of comparative constitutional scholarship by the mangers of the present regime. A fuller contextual study will betray the hollowness of mimesis.

That apart, this representation of the image of stability is not always good for those governed, because it denies them the plenitude of the right to adult franchise, a lifeline of any democracy. When you minimise the occasions of my political participation through the right to contest, and vote, you take away from me my democratic right to choose who may govern me for a term of years. Since democracy is itself an essential feature of the basic structure of the Constitution, affirmed eloquently in *Indira Nehru Gandhi v Raj Narain*,[7] and other leading pronouncements, any eventual amendment must run the gauntlet of judicial review.

But 'stability' has an external meaning in terms of globalisation. Foreign investors need a stable governance to promote their own ends. Frequent changes in the regime make forms of global capital flows problematic. As a flag of India's commitment to global economic 'development' it is necessary to ensure 'stability.' In other words, the proposed review *externalises* the Indian Constitution, in the sense that the *basic needs* of the foreign investor and global capital should be given priority over those of the Indian impoverished citizen masses.

There is room for deliberative democracy here, especially if we attend closely to Amartya Sen's recent notions of *development as freedom*.[8] But, I believe, these notions do not quite lend legitimation for the proposed review, as Sen's nuanced reflexivity on democracy as a prerequisite of 'development' fully suggests. For, as I understand him, political participation lies at the troubled heart of the democratic experiment and experience. Any restriction or attenuation of the right to adult suffrage, in the title of stability, violates the notion of development as freedom.

This then leaves us with the venal contention concerning whether a 'developing' country like India can afford the costs of frequent national elections. Empirically, the costs of periodic elections have yet to be shown to be exorbitant, as relative, say, to the expenditure on defence or even the VVIP triple Z protection (now under meagre review) to the growing clan of Indian politicians, or the costs of growing political corruption. These are *necessary* costs, in terms of commitment to an open society, for which one may say, without the fear of exaggeration, no order of investment is *ever enough.*

V
Judicial Appointments

The elevation of citizens into justices is a matter of universal (cross-cultural) importance. The notion of an independent commission for judicial appointments is scarcely novel in the Indian constitutional context. The Supreme Court itself has proposed this (in a series of Judges Cases[9]). This never, till now, attracted a tittle of national political attention.

In the present practice, the collegiate decision by senior justices of the Supreme Court functions to discipline executive whim and frenzy for elevation to appellate judiciary. This experience has yet to be shown as a poor substitute for an independent judicial commission.

Even so, in principle, there is room for such an innovation. One must await further details. But the anxiety concerning 'saffronised' judiciary remains triggered by ways in which the executive of the day has restructured the Prasar Bharati Commission, the Indian Council of Historical Research and many allied agencies. Indira Gandhi's transparency concerning her version of 'committed judiciary' had at least the merit of provoking a vigorous democratic discourse. Of course, each supreme executive of the day has the privilege to operate its own version of the 'spoils' system, but this does not disentitle profound anxieties about the hindutva ways of governance.

It is extremely unlikely that the age of retirement of Indian appellate justices will undergo an upward revision. That age was fixed, in the original Constitution, as 62 years for the high court and 65 years for Supreme Court justices. Presumably, judicial life in New Delhi was then considered more robust than life in the state high courts. And despite internationally recognised high levels of toxic pollution in New Delhi, the Supreme Court justices have done rather well in terms of longevity than many of their state brethren, as indicated by the infinite supply of retired Supreme Court justices for appointment to so many statutory commissions!

It is unlikely in the extreme that a review commission, almost entirely composed of retired justices and the wholly un-aging leaders of the Indian Bar, will recommend conservation of limited judicial talent by any age-extension. But if it is urged, considerations of judicial integrity and autonomy must entail that *no* retired justice will remain available to service the growing legitimation deficit of the Indian state. Put another way, the review should outlaw regime-convenient utilisation of superannuated judicial services beyond the age of 70 years.

Equally unlikely is any serious attempt to ameliorate fantastic court congestion. The review is unlikely to go beyond the two maxims that dominate judicial reforms discourse in India: 'justice delayed is justice denied' and 'justice hurried is justice buried'! Even if a so-called code of conduct for judges is prescribed, none will be commended for lawyers, who thrive on the prodigious manipulation of appellate judicial time and hierarchy.

VI
Constitutional Management of Corruption in High Places

A noble aim for constitutional reform, it is the one *least* likely to result, despite the notable fact that the current union law minister led forensic struggles in the Antulay Case.[10] The review is unlikely to enact a *fundamental right* of Indian people to a right to immunity from corruption in high political places. Without such a right, the promise of fundamental rights and human freedoms has, indeed, become a cruel constitutional human rights joke!

The enactment of such a people's right will at least mean that:

– No union or state minister of law will ever be appointed on the ground that he/she is

Equally crucial, from a regime-dictated standpoint, is the right to the freedom of conscience and religion. The Indian Constitution is unique in the fact that, by Article 25, it allows the state, in the title, inter alia, of morality to regulate the freedom of conscience. The BJP, and its 'normative' cohorts, have openly made it known that religious conversion, in their view, violates the right to the freedom of conscience. It has done this in a fractured view, because coerced re-conversion into the 'Hindu' fold is not seen as similarly violative.

The ways in which the review may proceed to reconstruct the right to the freedom of conscience constitutes the ultimate challenge to its 'immaculate' conception. True, the Supreme Court has conferred constitutional legitimacy on state legislations (Madhya Pradesh and Orrissa) regulating, even prohibiting, conversions through 'force' and 'fraud' in questionable modes that wholly disrupt, and deny equality to, missionary and proselytising religions in India. Promise of 'Heaven,' or threat of Hell ('Eternal Damnation') must, of course, one way or the other, coerce conscience. On the other hand, outside these tropes of persuasion missionary religious may have *no* future whatsoever in India. The apprehension that the review may further criminalise, and deconstitutionalise, the right to the freedom of conscience is very real, given the policies and practices of the BJP-led regime.

The review will, indeed, be faced with a Herculean task on this count, especially because the non-Hindu religious traditions are co-equally Indian, not 'firangi' traditions as the zealots would have us believe. And any such reconstruction, if not mindful of customary and conventional human rights law and jurisprudence will stand co-equally faulted by the Treaty Bodies of the United Nations and, more important, by practices of political resistance, often bloodied and bruised, by the insurgent human rights communities in India.

In this respect, the review carries both a political regime death-wish, and potential homicidal, even genocidal, unleashing of collective political violence, forms of which may even transcend the ruin of memory of the Indian Partition. The scary revival of considered practices of political hatred remains with us all in the cruel register of post-Ayodhya/Barbri masjid India, aggravated by amendment of civil service rules in some states to 'voluntarily join' the RSS, now proclaimed as a wholly cultural organisation!

It is conceivable and likely that review commission may propose constitutionalisation of reservation for women in state legislatures and parliament. But the vexed issue of inclusiveness (that is, representation for women from the depressed classes) will haunt the implementation of any equitable provision.

VIII Ending

The review commission, in the process of its constitution, is the *least* transparent act in the history of Indian constitutional change. All its predecessors were fare more transparent from a Nehru to Indira Gandhi. The only element of transparency is now made available by the inclusion of the former Lok Sabha speaker, P S Sangma, who remains committed to a constitutional change that excludes from high constitutional office any person who is not a 'naturally born' Indian citizen. Such a move to remove Sonia Gandhi from the Indian political scene, regardless of the political wisdom, or the 'basic structure' consistency, surely, needed no Bofors-type firepower of a comprehensive constitutional review: A simple exercise in amendment power would have sufficed.

One can understand the compulsions of the political regime in initiating the review. But it is difficult to understand, by any standard of public reason, that a former Chief Justice of India, and a former Chair of the Indian Human Rights Commission, as well as eminent 'jurists', should have accepted such a frightfully open-ended assignment. They should now not delude themselves that theirs will be the last word on the subject. Ideally, they should report that no amendments are needed, following president Narayanan's sage advice. But should they think some amendments necessary, they ought merely to focus on empowering peoples' struggles against corruption in public life. Above all, they should not weaken the already contested discipline of the doctrine of basic structure, thus furthering the imperial ambition animating the constitutionally inimical, and politically bankrupt, ruling formation.

For the sake of the bulk and generality of honest, law-abiding Indian citizens (virtues conspicuously absent in their titular rulers) one sincerely hopes that the review exercise dooms itself. However, the agendum for social, and insurrectionary, exercise of people's power seems immanent in the current expedient political endeavour. In this political 'war of position' (as Antonio Gramsci described the future of human rights insurrection) lies the destiny of Indian constitutionalism. Unfortunately, on all current evidence, the war stands already captured by the commanding heights of communal politics in India today. Active citizens now stand summoned to combat the present regime's war against the Indian Constitution. Will they stand up and be counted? EPW

Notes

1 "The Commission shall examine in the light of the experience of past 50 years as to how far the existing provisions of the Constitution are capable of responding to the needs of efficient, smooth and effective system of governance and socio-economic development of modern India and to recommend changes, if any, that are required to be made in the Constitution within the framework of parliamentary democracy and without interfering with the basic structure or basic features of the Constitution."

2 Five retired justices, two attorney generals, a former speaker of and a former secretary-general of Lok Sabha, a former woman MP, a former Indian ambassador to the United States and the editor-in-chief of *The Statesman*.

3 *Kesvananda Bharati v State of Kerala* (1973) 4 SCC 225.

4 *S R Bommai v Union of India* (1994) 3 SCC 1.

5 Indeed, the present troublesome enough pattern of political governance of university education (through the device the president of India, and governors of states, being ex officio visitors or chancellors) will eventually stand further politically vitiated by any such switch in the pattern of governance.

6 Already, the chair of the Indian Law Commission, who despite many an unimpeachable credentials for democratic rights, has proposed making preventive detention an integral aspect of Indian governance, is a member of the review body. It is unlikely that brother Jeevan Reddy would refrain from further constitutionalising Draconian normativity for the hapless Indian citizen detenus, given the commission's strong regime stance against 'terrorism.'

7 (1975) Supp SCC 1.

8 Amratya Sen, *Development as Freedom* (1999).

9 *S P Gupta v President of India* (1981) Supp SCC 87; *S C Advocates on Record Association v Union of India* (1993) 4 SCC 441.

10 See, Upendra Baxi, *Liberty and Corruption: The Antulay Case and Beyond* (1990).

11 If at all seriously intended, the review ought to propose the enunciation of such a human right, transcending the pathetic performance of the Supreme Court of India in *Satish Sharma Cases*.

12 Upendra Baxi, 'Constitutionalism as a Site for State Formative Practices...' 21 *Cardozo Law Review* (2000; forthcoming); see also Baxi, 'Postcolonial Constitutionalism' in *The Blackwell Companion to Postcolonial Studies* 125 (2000; Henry Schwartz and Sangeeta Ray ed).

Need for constitutional review

By Omkar Dattatry

Rightly a debate is going on about the need for constitutional review in the biggest democracy of the world. But this debate should not only land us in unnecessary controversy about the need for such a review. It is not without sound basis that intelligentsia of the country had recognised the need for the review of the constitution. Constitution of a State is in fact a life line and a guiding force for its survival and governance. It is the supreme documents of our democratic Republic but is in no way God made the time has now come to review it and change some of its provisions which do not stand the test of time. So, if it is sought to be reviewed for the betterment of the people and the efficient and effective governance of the country, there should be no reservationss about it. Since we are living in a dynamic world which is fast changing with the changes in the overall socio-economic, political and cultural life, so the constitution of the country can hardly remain static and should be reviewed to transform Indian into a mighty democracy in the 21st century. Our constitution has undergone many changes as it evident from as many as seventy nine amendments since its adoption in January 1950 in order to conform to the changing scenario of the nation.

Constitutional experts like Mr Singhvi and Mr Lalit Bushan have also favoured a review of the present constitution to make the documents adjustible with changed conditions. In the past only legal experts had felt the need for constitutional review but now even the man in the street has come to recognise such a change of the constitution.

But while, reviewing the constitution, its basic features doctrines and tenets should not be tampered with. The principle of secularism, social justice, and fundamental duties should be kept intact and should be strengthened for the real reformation and transformation of our pluralistic society. But we should not entertain any reservations on this account, as the NDA Government headed by Mr A B Vajpayee has made it clear that the changes in the constitutional provisions will be made and effected while keeping the basic tenents in tact. There is thus no need to create an atmosphere of suspicion and doubt. But the hallmark of our political psychic is that we only oppose something for the sake of opposition and this attitude has now to be buried under ground. Our political parties of different hues only take a psychological satisfaction from their trade of useless opposition. Our biggest political party Congres (I) never raised a finger against about eighty constitutional amendments and is now up in arms against the same review of the constitution. Even the Government commitment about the constitutional review and the decision to frame a Commission of experts for the review is opposed by Congress and other political parties only for the sake of opposition.

It was only during the second year of its enforcement i.e. 1951 that it has undergone its first amendment. It points towards some lacunae in its drafting. It was during the sixties that some experts felt the need for changing the parliamentary system of governance into a Presidential one. But today such a shift and need has assumed enormous weight due to prevailing situation in the country.

There is dire need for constitutional review as it lacks clear cut directions with regard to party system, electoral system and reform, defection and floor crossing among political parties politicians and the like. Besides this, State - Centre relations political stability, re-current elections, criminalisation of politics necessitate a fresh look and introspection of constitution to make it vibrant and fruitful.

Fractured verdicts have brought havoc with our Govenments and we have witnessed many Governments in a short span of time. This political instability is a great curse for the country and ways and means have to be seen to find fixed term Governments in Indian. The other malady is giving and withdrawing support to any Government at the Centre and in States. Support extended to a Government from within or without should be final and irrevocable. While reviewing the constitution these things should be given top attention. Fixed term for legislatures and abolition of bi-cameral system at Union and States is a pressing need and should find expression while re-viewing the constitution. Caste and communal polarisation of Indian politics is of greatest threat to us a plural country with composite culture. We have envisaged secularism as the basis of our polity but how strange it is that political parties are harnessing and exploiting the masses on caste and religious basis. Constitution after review should have clear provisions about the prohibition of communal and caste political parties to contest election as the present constitution lack clear cut direction in this regard. Although we have envisaged a socialistic pattern of society as the very preamble of the constitution speaks about it but even after 53 years of our independence and 51 years of the enforcement of the constitution, we have failed to bridge the gap between the rich and poor. Our constitution as framed by the constituent assembly and adopted and enforced on 26th of January 1950 though exhaustive, largest, written and flexible is based upon the imitations of the western nations like England, America etc. thus lacks coherence with our culture, history and civilisation and thus it could not meet the hopes and aspirations of the people and is responsible for the chaos in the society.

Our democratic constitution as it stands today does not have adequate provisions to deal with extremist and subversive situations and thus we have almost failed to deal with such a situation. Similarly all of us clamour for fundamental rights and we ignore our fundamental duties. In 1976 we have made a far reaching amendment in the constitution by adding a chapter on fundamenal duties. However, such fundamental duties are not enforceable in a law court. At the time of constitutional Review fundamental duties should also be made enforceable and for this it is mandatory that fundamental duties should be clearly defined and put forth to minimise any chances of their mis-representation and misinterpretation as duties seem to be abstract. Moreover, it has to be seen that reservations and its benefits should percolate to the really deserving people among economically backward and the lowest among scheduled castes and scheduled tribes. It is economically backward which should get benefits of reservations and caste and religion should never be a criteria for this. Article 356 and 249 also require drastic review in order to restrict their use to only deserving situations. As article 356 has been misused by various Governments for their misdeeds.

Congress, BJP and leftists are all in favour of amendment to article 356 of the Constitution. But their view points are different. Ram Jethmalani the present Law Minister is also in favour of amendment to article 356 so as to use it very occasionally for the interest of the nation. All thus necessiates the redrafting and re-viewing the constitution in order to suit to the hopes and changing aspirations of the people. The watchward of modern world is reform or die so we have to reform our parliamentary democracy and our political system through the Review of our constitution which is already overdue. Without reviewing introspection and redrafting how can our biggest democracy march in the new millennium in which we have just entered with ferocious zeal and spirit. Constitution has not descended from heaven and we should review it while keeping its basis unchanged.

Constitution Review (Secondary)

A constitutional review without identifying the lacuna will not help, says **P N Duda**

Constitutional subversion

'A Constitution to be living must be growing. If the impediments to the growth of the Constitution are not removed, it will suffer a vital atrophy. The question of amending the Constitution for removal of difficulties which have arisen in achieving the objectives of socio-economic revolution, which would end poverty and ignorance and disease and inequality of opportunity have been engaging the active attention of the Government and the public for some years. It is, therefore, proposed to amend the Constitution to spell out expressly the high ideals of Socialism, secularism and integrity of the nation... and make directive principles take precedence over the fundamental rights."

These are not the words of the Prime Minister in support of the much-sported design to take a second look at the Constitution. These are extracted from the Statement of Objects of the fateful 42nd Constitutional Amendment Bill of 1976, giving the country a constitutional overhaul which, but for a fortuitous political miscalculation, would have degenerated our polity to a dictatorship.

In the present case it is vaguely hinted that the amendment is directed at fighting the evils of corruption, instability, horse-trading in Parliament, the evils in electoral process and terrorism. These are attractive political wishes that call for altered social and psychological attitudes at the levels both human resources that run the Government and the citizens. Constitutions do not and cannot alter human nature, nor create gentlemen out of thieves. For changing the outlook and values of people, we have to tap sources other than law and constitutions.

A written constitution, however sagaciously or imaginatively conceived and drafted, cannot think of all possible contingencies that may arise with the passage of time. It does need to be periodically oiled and greased and set to the new time. But the changes required could only be achieved by development of traditions and conventions and the play that is introduced by courts in interpreting the open structure of constitutional language.

American constitution, drafted and adopted more than 200 years back, in the socio-economic backcloth of a non-industrial, agricultural society has worked strikingly well without resort to statute-amendment process. The US constitution has been amended only 26 times, and almost always to confer greater liberal and economic rights to the citizenry. It would, however, be being a little unfair to Indian Parliament to charge them with excessive tinkering with the Constitution.

The US constitution, unlike India's, is only a political charter and a detailed legal document with a large potential for forensic disputes and display of skills. The nature of Indian Constitution has posed problems which if not soluble by judicial ingenuity or failure to develop a convention or usage to solve them, call for a formal amendment, as was done in Zamindari Abolition or Privy Purses cases.

The amendment process touched the lowest depth of abuse when in 39th Amendment of 1975, provisions were made to take away the effect of a judgement of Allahabad High Court which had unseated Indira Gandhi as a member of Lok Sabha. An amendment in the Representation of the Peoples Act 1951 provided a retrospective law that all offences of which she had been found guilty, will be deemed never to have been electoral offences notwithstanding any judgements or orders.

The amendment was also under the protective umbrella of the 9th Schedule, which makes some laws beyond challenge for any legal or constitutional ground. It provided that the judiciary will be out of the picture at original or appellate stage in prime minister's election disputes. This amendment and its sequel, the 42nd amendment, rendered the Indian constitutionalism into a cadaver, buried in the tomb of history.

Miraculously in an election held by Indira Gandhi in the hope of returning to power in gratitude from the people for seeking trains running on time and office absenteeism getting reduced, with blindness for excesses imposed by Emergency, she found herself and her party routed. The Janata government which succeeded the Congress almost immediately after coming to power introduced restoration of judicial power to courts, resumption of virtually destroyed judicial review, restoring the fundamental rights which had been made ineffective by an over-riding Article 31C under which a person dissenting from the Government would become anti-national and, therefore, not entitled to the fundamental rights.

> **W**henever the government in power has attempted a review of the Constitution under the cover of giving it a second look, the Constitution itself has been damaged. The nature of Indian Constitution has posed problems which, if not soluble by judicial ingenuity, call for a formal amendment, as in the cases of Zamindari Abolition and Privy Purses

History is replete with instances that whenever the government in power attempted a review of the Constitution without identified lacuna to cure, it has been destructive of the system. The period between 1918 to 1945 is full of instances all over the world showing that under the cover of taking a "second look" at an existing constitution, the constitution itself was damaged.

The Indian Constitution as a constitutional document is a masterpiece with not many parallels. Sir Earnest Barker, a celebrated British jurist, soon after we adopted our Constitution wrote a book. The Principles of Social and Political Theory, and dedicated it to the Preamble of our Constitution reproducing it in toto. In the preface, he wrote: I ought to explain... why the Preamble of the Constitution of India is printed after the table of contents. It seemed to me, a state brief and pithy form of the argument of much of this book; and it may accordingly serve as a keynote."

Exigencies of times and occasional problems created by judicial conservatism of judges trained in Locke-ian hue, and possibly unaware of developments in theories of property brought about by Proudhonian thought process of removing private property from the constitutionally erected pill box and making it subject to other rights and obligations like justice, fairness, and equality, they declared lots of reforms in property relations void, as conflicting with constitutional guarantees. The first decade of India's constitutional litigation revealed this interesting challenges and responses between the judiciary and the executive, revolving not around any individual interests but on conflicting views on social policies.

In subsequent years, the amendments arose largely out of power struggle by the governments fighting for their survival. Passing through the night of horror in Emergency, the later amendments became a hotchpotch — aimed at the impractical and insane efforts to improve the quality of men, a feat impossible of attainment by law or amendment of law.

Till Emergency, the Constitution was amended only to save a policy taken but annulled by judicial verdicts. In Emergency, Indira Gandhi made a departure and said that the background for introducing the 42nd amendment was — what the Prime Minister and the Attorney General of today say — the need to update it, without identifying and articulating in specific terms the irritants which they desire to remove. Ad hoc constitutional amendment may not only be desirable, but necessary.

A general review of its working in abstraction with a view to tailor it afresh to suit their notions of what the Constitution ought to be, is constitutional subversion. Indira Gandhi used the same language and logic and gave us the 42nd amendment that overturned society. While introducing the amendment, Indira Gandhi said it was aimed at securing national character of discipline. And she also found a lot of applauders supporting the move. We appear to be in for a menu of the warmed-up cabbage which we had in 1975.

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(Imp :-) Q1:- Whether it is the Constitution that has failed us or whether it is we who have failed the Constitution? Comment.

Q 2:- Whether there are any fundamental features of the Constitution that should be kept outside the purview of the review exercise, if so, what are these features?

OPINION

Jay Bhattacharjee

Constitutional review derailed again

A rape is a crime,
Unless you rape the electorate
A million at a time

Poor Ogden Nash, penning his rhyme in the 1930s, could not possibly have foreseen the dimensions of the Indian population in the 1990s and in the new century. Otherwise, he would have substituted "hundreds of millions" for "a million" in the last line.

Our politicians are at it again, playing the game they know best—pulling the wool over the eyes of the country's electorate. How else can one react to the shenanigans that are going on in the Capital's corridors of power on the critical issue of reviewing our splintered and flawed Constitution? The NDA Government has, as usual, shot itself in the mouth on the subject. After an initial burst of bravado, the generalissimos of the BJP-led alliance, who were leading the charge, have tamely retreated before the Congress-structured barricades.

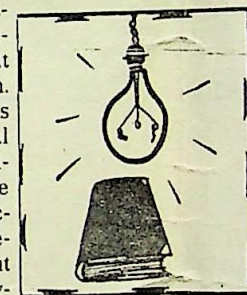
Certain historical parallels may not be to Mr Ram Jethmalani's liking but one must remind him that he seems to have taken Lenin's advice of the 1920s a bit too seriously. Good old Vladimir Ilyich, when initiating the New Economic Policy, told his party faithful that it was necessary, at times, to take one step forward and two steps backward. However, the Vajpayee brigade, with Mr Jethmalani at the command headquarters, has taken a dozen steps backwards without even trying the mandatory one step forward.

History and military strategy apart, there is a serious risk here of our netas, lawyers and mandarins making us miss the bus again, unless the hapless citizens raise their voices and lodge their protests against this charade. The central points in the debate are simple: Firstly, is our Constitution in need of a review and a radical restructuring?

Secondly, what are the fundamental features of the Constitution that should be kept outside the purview of the exercise? Within each of these two broad subject areas, there are, of course, many strands and arguments that need to be addressed, and one will endeavour to do so in this piece.

One the first point, the protests have been orchestrated primarily by the Congress party and its cohorts, including the marginalised left wing elements, and some other interested groups. The rantings of the two Communist parties can safely be ignored; they have given up whatever vestiges of Marxism they had long ago, and have become the rearguard flag carrier of the Congress, although the latter itself does not give the comrades the time of the day (except when Ms Sonia Gandhi needs to include the Communist MPs in the list she carries to Rashtrapati Bhavan at the time of staking her claim to form a government). Among the other elements who are overtly opposed to a meaningful constitutional review is the President of the Republic, Mr KR Narayanan. One can understand the concerns of the country's constitutional head when the ruling government talks of reviewing the Constitution under which he functions, but Mr Narayanan has lately developed this strange penchant for aligning himself with viewpoints that almost echo those of the Congress. It is because of this that his inept intervention in this debate is something that need not bother us too much. We must go straightaway to the points raised by the storm troopers of the Congress.

The first point made by the opponents of the review is that the Constitution has served the country reasonably well and there is no need to examine its fundamental framework and tenets. In other words, the country should follow the American dictum which says, "If it ain't broke, don't fix it." Now, this is such an absurd proposition that one wonders why Mr Jethmalani and company have not torn it to bits. If the Constitution had been such a perfect arrangement, why was it necessary to amend it 79 times? Furthermore, it is the Congress party itself that was instrumental in bringing about the overwhelming majority of these amendments.

Then again, one of the litmus tests for correctly ascertaining the performance of the Constitution is the progress (or lack of it) of the country ever since it adopted the document. On this score, there would be no dispute about its dismal efficacy; if a tournament fails to work, year after year, there must be something basically wrong with the rules under which the tournament is organised. As a country, society and economy, we have been at the tail-end of the international caravan since 1950; surely, it is our duty now to examine the pertinence and appropriateness of the regulations that govern our national life and determine the efficiency of our functioning. Ans - 1st

The Congress spokespersons have made much of one particular thesis: it is not the Constitution that has failed, but the politicians and the other participants in the country's governance who have let down the Constitution. This is another fraudulent and facetious interpretation; the players in the country's key institutions are all governed by the Constitution. It is the latter that determines the criteria under which people are admitted to the inner core of power, including the machinery of governance. Again, it is the Constitution that sets out the terms for monitoring the performance of the legislature, the executive and the judiciary, as well as the sanctions that can and should be imposed on these elements if and when they violate its provisions. If there is overall anarchy and mayhem in the country, how can the framework be blameless?

The only concession that we should make to the Congress party in this debate is to gladly agree that the blame for the present mess should also be attributed to the participants in the country's public life. This will show up the Congress in a particularly poor ligh[t. Af]ter all, in terms of sheer arithmetic, if on[e looks] at the Congress presence in this arena o[ver the] years, the weighted average will defini[tely] demonstrate that the principal culprits are [the] Congress party and its members. It will inde[ed] be poetic justice when they are hoist with thei[r] own petard.

Ans 2 :-

We now come to the second part of the main debate, when we discuss whether there are any fundamental features of the Constitution that should be kept outside the purview of the review exercise, and if so, what are these features? ~~This writer is of the opinion~~ that there are indeed certain fundamental features that are not open to review and should never be subjected to such an exercise. These are (not necessarily) in any order of priority: (a) the Republican structure; (b) the federal nature of the country; (c) equality of all citizens under the law; (d) liberty, fraternity and justice and certain fundamental duties. The magnificent preamble of the present Constitution should be the beacon; the other aspect ~~that this writer has in mind~~ is that the Directive Principles written by the founding fathers of the present Republic should be given centre-stage in any future framework.

Everything else should be open territory; the French did this in 1958 when they jettisoned the Fourth Republic and ushered in the Fifth. This did not imply the abandoning of the exalted ideas of liberty, equality and fraternity enunciated in 1789; it just meant an updating of the application of these principles to bring them in line with contemporary conditions. You cannot call your effort a "review" when you deliberately exclude the most controversial and notorious features of your subject.

However, our present ruling ... already thrown in the towel. ... be done to restore the long-... process of constitutional review that has been so ignominiously derailed by totally vested interests that have their own wretched personal agenda.

SECOND OPINION

Politician, Heal Thyself

*The BJP-led coalition government has stirred up a controversy with its move to 'review' the Constitution-at-50. It has set up an 11-member review commission under the chairmanship of former Supreme Court chief justice M N Venkatchaliah. Despite vehement protests from the Opposition, the government has gone ahead; a decision which has raised speculation within the political establishment about the actual motives behind the move. The first salvo came from no less than President K R Narayanan himself, who cautioned the government to first be sure "whether it is the Constitution that has failed us or whether it is we who have failed the Constitution." As the debate heats up, **N C Satpathy** asks senior Supreme Court lawyer and constitutional expert **Rajeev Dhavan** for his views on the issue.*

Do you think a review of the Constitution is called for at all?

The Constitution of India is not a toy that you can fool around with. Nor is the golden jubilee of the Indian Republic an occasion for a wholesale review of it. In my opinion, India's governance should be reviewed constantly, but the Constitution should not be tinkered with. This Constitution review plan has grown from the hidden agenda of the BJP to hold on to power and win future elections under the guise of stability after it failed to do so in 1995, 1997 and 1999. The other parts of the agenda are restructuring federalism, increasing the Union's power and tinkering with the judiciary. There is a distinction between governance and the Constitution. The best of constitutions can fail when confronted with the worst of governments. Israel still does not have a constitution as its lawmakers could not agree among themselves in 1949. Pakistan took nine years — from 1947 to 1956 — debating over it, and it collapsed in two years. A review of the Constitution will open up a Pandora's box. There will be innumerable demands.

It is argued that 'contemporary realities' require a constitutional update, like the one the US undertook in 1989. Can the situation not be addressed through constitutional amendments as and when required?

The philosophy of the Constitution is to invite change whenever necessary. But not press for change because of a party's political reasons or for its own sake. On this basis, certain creative changes have been made in our Constitution. For example, the linguistic amendments and the Panchayati amendments. Party-induced changes have always been a disaster as is evident from the Emergency-related amendments in 1975 and 1976.

Considering the instability of our political system over the past decade and more, would it be prudent to fix a five-year term for Parliament and legislatures?

By itself, such a proposal is ridiculous. Rather, it will create more instability. It could lead to a paralysis between the legislature and the government and raise the suitcase price of parliamentary votes. It will not obviate the game of musical chairs. And MPs, with the knowledge that they are secure, will increase the price of votes in Parliament. We have a viable, popular democracy, in which people reject their rulers if they wish. I do not think there is a need to fix a five-year term for Parliament.

Justice Venkatchaliah has said the basic character of the Constitution should not be tampered with. What does this mean?

The basic structure of the Constitution has a wider meaning. Justice Venkatchaliah has spoken against the parliamentary system being abandoned and changes within the parliamentary system.

There is widespread speculation that the BJP is trying to usher in a uniform civil code and abolish Article 370 through the review. Are these fears justified?

The BJP's agendas are hidden and conspiratorial. Communal agendas to drum up support are very much on the anvil. This is evident from the RSS controversy. The prime minister said the RSS is a social organisation and government servants could associate themselves with it if they so desired. By this, the party is playing to the extremist gallery. The tragedy is that this government has floated the idea of a review of the Constitution without so much as a policy statement or a white paper being issued on it. This is insidious and undemocratic. It surely gives rise to suspicions.

Without undertaking a thorough review, how can the much-needed judicial reforms be brought about? For example, to expedite the judicial process or to bring the errant in the judiciary to book?

The case for appointment of judges and bringing judicial discipline within a realistic framework is strong. However, a general review of the Constitution is not called for on these grounds. This amendment has to be considered in its own right, otherwise it will be a dangerous exercise. Opening a Pandora's box in order to deal with the judicial system is like using a steamroller to crack a nut. After the failure to impeach Justice Ramaswamy in 1992, Justice Venkatchaliah had said that an accused judge cannot be denied casework. There is a need for a complaints' mechanism which will make sure that judges are accountable, sensitive to cases and answerable. Virtually every mature judiciary requires such a complaints' mechanism, either formally or informally. A series of incidents in the nineties shows that informal mechanisms do not work. Therefore, a formal mechanism that is balanced and effective is urgently required. The US reworked its mechanism for federal judges in 1980. The Indian judiciary has been complacent in this regard. Some changes are definitely needed. There is a need for a national commission for judicial appointments so that these can be made after due scrutiny and in a just manner. However, an exercise that needs amendments cannot justify the overall review suggested by the BJP government.

Law minister Ram Jethmalani says the government will ask the review commission to curtail the 'much-abused' Article 356. What do you feel about this?

It shows the deviousness in the government's approach. It say it will ask the commission to scrutinise Article 356. In other words, 'We are not doing this, someone will do it for us.' This attitude needs to be condemned.

What do you think are the areas where the Constitution needs to be strengthened?

First, we in India have a weak democracy and it consists mainly of people rejecting rulers at elections. Indian governance needs more democracy, less censorship, freedom of expression and less corruption. This does not require any constitutional change. What is needed is a re-examination of governance. Second, India has 350 million people living below the poverty line. Just governance requires socio-economic justice. Third, the BJP and its cohorts have made India's secular image fragile. This needs strengthening to safeguard the uniqueness of Indian civilisation. Fourth, India's governance has been 'lumpenised.' *Goondas* and thugs have taken over governance. Our politicians should cure their own parties as a first step.

Anil Rai

"In my opinion, India's governance should be reviewed constantly, but the Constitution should not be tinkered with. This Constitution review plan has grown from the hidden agenda of the BJP to hold on to power and win future elections under the guise of stability after it failed to do so in 1995, 1997 and 1999."

Reviewing Constitution : A Continuing Dilemma

ARSHI KHAN

Every nation is built on the constructive aspirations of the people in general and their representatives in particular, that is, those who frame and follow the Constitution for sustaining unity, security and development. On the other hand, the role of the Constitution becomes very significant in a federal society like India where both territorial unity and social harmony become complementary to each other. The role of the Constitution is always determined by its philosophy, which in the case of India is mostly based on external experiments. In fact, the whole process of nation-building in India is guided by the Constitution and other forces such as political parties and governmental policies. During the last five decades, the Indian Constitution became instrumental in establishing a positive atmosphere conducive to the growth of democracy, social justice, and development. But it certainly provided for a very strong Centre. It is true that the Constitution has some grey areas. Professor T.K. Oommen feels that the basic structure of the Constitution should remain the same. But there are some aspects that can be looked into keeping in mind the overall welfare of the public.[1]

Reviewing the Constitution

THE Indian Constitution today is very much in discussion mainly because the BJP-led coalition government at the Centre has sparked debates over its recasting. Even earlier, there have been several academic exercises and reform committees vis-a-vis the Indian Constitution which is merely a half-century old document. In most of the cases, scholars and experts have repeatedly stressed upon the need for certain constitutional reforms to accelerate the federalisation process in the country.

Particularly after the rise of the BJP as the single largest party in the Indian Parliament's Lower House (Lok Sabha) and its success in heading coalition governments at the Centre (after crystallising its position in the Hindi-heartland States), there has been a perceptible change in the approach of different parties towards evaluating the Indian Constitution. The greatest opponents of Article 356, which calls for President's Rule in States, now talk about retaining this emergency provision in the Constitution. Perhaps the reason is that it is easier to tolerate the communal force in the States' governance than to control their designs at the Centre. Therefore, the fear of the opponents of Article 356 and other Centrist provisions has shifted to the growing might of the BJP which is known for the *Hindutva* cult and saffronisation process. The other factor for such an unconventional tilt is the fact that the Indian States have no separate constitutions like other federations. The Indian Constitution alone assigns the role to both the Indian Union/Central Government and the State Governments. Therefore, secularists and federalists want to retain the existing Indian Constitution so that it should not become a pawn in the hands of the Rightist forces. The use of Article 356 to dismiss three BJP governments in Rajasthan, Madhya Pradesh and Himachal Pradesh soon after the demolition of the Babri mosque and its approval by the highest body of judiciary (the Supreme Court of India) in the Bommai Case (1994) was perceived as a new threat to the BJP. In his recent remarks the Union Law Minister, Ram Jethmalani, pointed out that the Supreme Court's notion of "misguided secularism" as the basis for invocation of Article 356, needed to be "reviewed".[2]

Secular Doctrine

JUDICIAL emphasis upon secularism in the continutation of the debate over the importance of Article 356 was certainly a negative development for the BJP. Article 356(1) states that "if the President....is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution", the State comes under Central rule. So this provision may be used to check any State Government which violates the basic features of the Constitution. In various historic judgements, the Supreme Court identified rule of law, judicial review, parliamentary democracy, federalism and secularism as the basic features of the Indian

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Constitution which cannot be altered. Thus there is a sharp difference of approach between the BJP and others (except the Congress party) towards Article 356. The BJP seems to be more worried after the Bommai Case judgement; whereas the others—particularly the CPI, CPI-M, Akali Dal, TDP, DMK and JKNC—are worried over this provision due to the Centre's encroachment over the State Governments. In the Bommai Case, Justice Ahmadi said:

> Notwithstanding the fact that the 'Socialist' and 'Secular' were added in the Preamble of the Constitution in 1976 by the 42nd Amendment, the concept of secularism was very much embedded in our constitutional philosophy. The term 'secular' has advisely not been defined presumably because it is a very elastic term not capable of a precise definition and perhaps best left undefined. By this amendment what was implicit was made explicit. The Preamble itself spoke of liberty of thought, expression, belief, faith and worship.[3]

However, the justification of secularism is based on certain articles of the Constitution. In the opinion of Justice P.B Sawant (for himself and on behalf of Justice Kuldip Singh, Justice S.R. Pandian),

> The Preamble and Articles 25, 26, 29, 30, 44, 51-A, 14, 15, 16 by implication prohibit the establishment of a theocratic State and prevent the State either identifying itself with or favouring any particular religion or religious sect or denomination. The State is enjoined to accord equal treatment to all religions and religious sects and denominations. Under our Constitution whatever be the attitude of the State towards the religion, religious sects and denominations, religion cannot be mixed with any secular activity of the State. In fact, the encroachment of religion into secular activities is strictly prohibited. The State's tolerance of religion or religions does not make it either a religious or a theocratic State.[4]

Justice B.P. Jeevan Reddy (for himself and on behalf of Justice S.C. Agarwal, Justice Pandian concurring) said:

> To State, all are equal and are entitled to be treated equally. In matters of State, religion has no place. No political party can simultaneously be a religious party. Politics and religion cannot be mixed. Any State government which pursues unsecular policies or unsecular course of action acts contrary to the constitutional mandate and renders itself amenable to action under Article 356.[5]

These learned remarks of the Supreme Court of India provided impetus to the Indian Union to use its power for constructive purposes. Justifying the use of Article 356 against Madhya Pradesh, Rajasthan and Himachal Pradesh, the Supreme Court gave the verdict:

> Secularism is a part of the basic structure of the Constitution. The acts of a State Government which are calculated to subvert or sabotage secularism as enshrined in our Constitution, can lawfully be deemed to give rise to a situation in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution. Proclamations dated December 15, 1992 and actions taken by the President removing the ministries and dissolving the Legislative Assemblies in the State of Madhya Pradesh, Rajasthan and Himachal Pradesh pursuant to the said proclamations are not unconstitutional.[6]

But these views of the honourable judges were expressed against a particular horrible situation created by the demolition of the mosque. Thus the Supreme Court judgements should be understood as warnings against any such violation. On the other hand, the Indian state and its various agencies have consistently maintained a lukewarm attitude to secular principles and practices. The Indian Establishment has been reasonably tolerant to communal organisations and, very exceptionally, it has taken action against them, that too for for a very short period of time. This part of the role of the Indian Establishment should be attributed to the method of selection, training and performance appraisal of the Indian bureaucracy, Army and other officials.

Contesting Views

After the BJP came to power at the Centre, the attitudes of the BJP sympathisers began to change. At this crucial juncture, there is a need to look into the BJP idea of reviewing the Constitution which it endorsed in the election (1999) manifesto of the National Democratic Alliance. At the special function in Parliament's Central Hall to celebrate 50 years of the Indian Constitution, the Prime Minister, Atal Behari Vajpayee, stressed upon the need for a commission to review the Constitution for the purpose of political stability, the people's impatience for faster development and removal of regional and social imbalances. On the same platform, the President, K.R. Narayanan, noted:

> Our recent experience of instability in government is perhaps not sufficient reason to discard the parliamentary system in favour of the Presidential or any other system.[7]

He further said:

> Today...we have to consider whether it is the Constitution that has failed us or whether it is we who have failed the Constitution.[8]

Despite differences of opinion between the head of state and head of government, the Union Law Minister, Ram Jethmalani, and other ruling members asserted that there were no such differences. The Union Home Minister, a hardcore leader of the *Sangh Parivar,* named the exercise of constitutional review as a "periodic health check-up". He also named some problem areas such as the anti-defection law, the strength of some State Assemblies, and Centre-State relations as spheres where a fresh look could be given.[9] But it was consistently maintained by the Prime Minister and other high officials that there will

be no attempt to change the basic features of the Constitution.

In the initial phase of the debate the BJP showed interest in former President R. Venkataraman to head the Constitutional Review Commission which sparked a huge protest from different quarters. The main reason was his strong advocacy for the presidential form of government. Those who supported the review plan were the DMK, TDP and other allies. Whereas the AIADMK condemned it as the "calculated move" of the Prime Minister to "turn the Constitution on its head".[10] The Janata Party President, Subramaniam Swamy, said if a general review was necessary, then the Law Commission was there for that purpose. Many features of the basic structure of the Constitution such as secularism and adult franchise were not to the likening of the "fascist, communal RSS". The RSS had directed the BJP to find ways to start a new republic with a *Hindutva* Constitution. "This spells danger for Indian democracy".[11]

Similarly the Congress(I) Working Committee member and Leader of the Opposition in the Kerala Assembly, A.K. Antony, criticised the BJP for tampering with the Constitution. He said:

> The considered and sagacious views expressed by the President is a reflection of his farsighted vision. His opinion that parliamentary democracy is best suited for the country where economic inequality between caste and religious communities persisted and where regional and language contradictions existed should be viewed as a valuable advice of an experienced statesman.[12]

Moreover the Communist Party of India (CPI) and CPI-Marxist endorsed the President's view. However, in the constructive opinion of constitutional experts, an exercise to review the whole Constitution would be unnecessary and the need of the hour is only to examine certain grey areas while concentrating on more effective implementation of its provisions. Former Chief Justice of India, A.M. Ahmadi, said:

> In the life of a country's Constitution, 50 years is not a sufficiently long period to call for its replacement. If the idea is to review the Constitution in its entirety, I am afraid it is premature. But if the objective is to review certain grey areas only that may be different matter.[13]

The academics warn that the Centre's move for a review of the Constitution is "unwarranted" and many see in it an effort to build the kind of atmosphere which preceded the Babri Masjid demolition.[14] Professor Dipankar Gupta said:

> In normal circumstances, a review does not really call for such a hue and cry. But in this case, it is not in the national interest—it is motivated by sectional party interests.[15]

Professor C.P. Bhambhri said:

> It is a trap being laid by the BJP and they will be successful in deligitimising the Constitution and raising in the minds of the people doubts about it. They will use TV/radio—the government media—and politically divide the country on the issue of the Constitution.[16]

In the words of Professor T.K. Oommen,

> the BJP's motive is to convince the people that cultural nationalism will be more effective than the cultural pluralism endorsed by the Constitution. Through the review, they can communicate to the masses that there is an alternative way of building the nation.[17]

Task before the Review Commission

UNDER the tremendous pressure of public opinion, the Union Government asked the former Chief Justice of India and Chairman of the National Human Rights Commission, M.N. Venkatachaliah, to head the National Commission for the review of the Constitution, and he agreed to do so. The proposed Constitution Review Commission would consist of eleven members including the Chairman and the Member-Secretary. Justice Venkatachaliah agreed to accept the offer if the exercise to review the Constitution did not touch its basic structure and if the panel was constituted with his consultation. He clarified that the task of the Commission was not to review the Constitution, but to take a look at the manner in which it had worked over the years.[18] He made it clear that the Commission would have representation from the linguistic, religious, minority and ethnic groups and the feedback would be obtained from all sections of society. The Commission would try to enforce a ceiling on government spending and deal with issues related to the Budget deficit, Centre-State relations, intellectual property rights, human rights and the rights of women and children. In his opinion, the judiciary could not remain independent without financial autonomy and the Commission would consider whether this could be incorporated to take steps to tackle the "all pervasive corruption" in government and its agencies.[19] Justice Venkatachaliah also said that the Commission would see how far the constitutional aspirations of people of India have been realised and fulfilled. On another occasion, he called for looking into the electoral system, economic development, social opportunity, environmental safeguards, sustainable development, national integrity and security. He said that the Commission is not entitled to bring about changes in the Constitution. It is only the people's representatives that can do it. The Commission's work is essentially an academic exercise to collect and collate the views of the civil society with the political society.[20]

After these assurances of Justice M.N. Venkatachaliah, hopes have increased of a positive outcome. Interestingly, former Prime Minister V.P.Singh has called for a similar exercise by the Opposition. But we must remember the Supreme Court judgement in the Keshavananda Bharati Case (1973) that even Parliament cannot amend the basic features of the Constitution.

Disturbing factors

However, the debate raised over the constitutional review is bound to unveil certain realities. The BJP is guided by its ideological mentor and its policies are reflected in recent developments in the fields of education, security (nuclear explosion) and Constitution. First, the idea of a review is not disturbing if it is meant for upholding secularism and federalism. That may require changes and reforms in the related provisions. But the intention of the BJP seems to create doubts due to certain factors. The February 6 issue of *Organiser*, the RSS mouthpiece, said that it (the constitutional review) should reflect Indian ethos, underlining the fact that we are "one people, one nation, one culture". Very recently the Gujarat Government's controversial circular allowing civil servants to avail the membership of and association with the Rashtriya Swayamsevak Sangh as well as the Centre's approval of such a step are objectionable. On February 7, the Union Home Minister, L.K. Advani, also supported the Gujarat Government despite the fact that the Central Services Conduct Rules (1966) strictly prohibit civil servants from associating with the RSS. The recent highly shocking statement of the BJP Chief Minister of Uttar Pradesh over the Babri mosque (that it was demolished peacefully and the government will not stop the VHP from building the Ram temple), the disruption of the shooting of the film *Water* in UP are some of the BJP's misdeeds. The BJP-led coalition government at the Centre has installed pro-*Sangh* persons in high places in various educational and cultural institutions. Moreover, the Home Minister, L.K. Advani, and others have been quoting Savarkar and Guru Golwalkar in their speeches. The legitimisation movement is bound to create doubts over the intention of the BJP particularly when it comes to the review of the Constitution.

The BJP-ruled States—Gujarat and UP—have established the supremacy of the party's objectives over the constitutional obligations of the State Governments. Numerous attacks on minorities and their institutions are on record. The Gujarat Government's circular and open support of the Central Government expressed by the Prime Minister:

> The RSS is not a political outfit. It is a cultural and social organistion and I do not think objections should be raised on anybody joining it.[21]

is a national tragedy. On the other hand, the RSS is the breeding ground of the BJP. This organisation was instrumental in the Babri mosque demolition and other campaigns which generated political support for the BJP. Is it possible to study the BJP in isolation (without the RSS)? Certainly not. The task of national reconstruction to which every *swayamsevak* dedicates himself is a political goal. Shyama Prasad Mukherjee launched the Jana Sangh with five members from the RSS, one of whom is now the Prime Minister and another Home Minister.[22] Mahatma Gandhi's private secretary quoted Gandhiji characterising "the RSS as a communal body with a totalitarian outlook".[23] Therefore, the intention of the BJP vis-a-vis the constitutional review is not unambiguous. The Jana Sangh had advocated for a unitary form of government, uniform civil code and deletion of Article 370.

Second, the idea of constitutional reforms (not in entirety) has been on the top of the list of many regional parties, the CPI, CPI-M and others. Their demands are aimed at federalisation which the Constitution lacks. No doubt the Indian Constitution is perfectly designed to keep full control over territorial sovereignty with too much powers vested in the Centre. What it basically needs to add is to seek social harmony and social unity which can be achieved through the secular sincerity of Indian Establishment. Thus secularisation of the Establishment is required. Our Constitution empowers the Centre *vis-a-vis* the people and provinces which is a British legacy. Territorial unity was retained in the Constitution mainly due to the partition and secessionist threat from a few smaller States. As a result many provisions were made to thwart any such move. But the framers of the Constitution perhaps overlooked the need for inserting provisions for political parties (to shed communalism) and consensual democracy in India encompassing several identities.

A Reality

The Indian Constitution has placed the Union Government in a unique position in which it has the attributes of a "Leviathan". The Union Government has almost been made as powerful as it was under the Imperial arrangements as envisaged in the Government of India Act, 1935,[24] which "was the foundation document.[25] In the preparation of the

Draft Constitution the Constituent Assembly, its various committees and the drafting committee borrowed a great deal from the Constitution of the USA, Canada, the Commonwealth of Australia, the Irish Free State and above all the Government of India Act of 1935. Of these the most important place has to be given to the Government of India Act of 1935. It is not merely the ideas that have been borrowed from it but its very wording has been adopted in almost all clauses and articles. No other Constituent Assembly or Drafting Committee in history has so blindly copied a previous model to the same extent as the Indian Consituent Assembly and its Drafting Committee have done.[26]

One should not forget that during the past five decades, the Schedule and 79 Amendment Acts have been crucial in fulfilling the various needs of the country. Commissions have been institutionalised for Women, Minorities, Scheduled Castes, Scheduled Tribes, etc. They have given their reports and suggestions. The 73rd and 74th Amendments have provided for local self-governments. Provisions for autonomous district councils and zonal councils already exist. Many valuable suggestions have already been given by commissions and committees appointed by the Centre, State Governments and Opposition on Centre-State relations. The BJP-led coalition should look into these documents for constitutional remedy. What is really lacking is the political will for consensual democracy in which all marginalised communities get due share in governance. Political stability can be achieved through secular governments, power-sharing (federal balance) and consensus which the BJP should look at. For this the Constitution should stress upon secularism and federal democracy. But the BJP is interested in redefining secularism. Although secularism is said to be the one of the basic features of the Constitution, this attribute has remained in the background so far as the exercise of the Establishment is concerned. Sitaram Yechury of the CPI-M said:

> The BJP is trying to undermine the secular foundations of the Constitution. They have a theoretic *Hindu Rashtra* in mind, and the RSS in fact feels that the present Constitution is un-Hindu.[27] ■

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Discourse on Constitutional Change

AJAY K. MEHRA

President K.R. Narayanan, who had outlined in his address to the joint sitting of the two Houses of Parliament on October 25 his government's resolve for a fresh look on the Constitution of India in order to prevent political instability, cautioned the votaries of constitutional change on December 2 to ensure that the revision (of the Constitution) should be done in a manner that the lofty ideals enshrined therein are safeguarded. The President's word of caution on the occasion of the 115th birth anniversary of Dr Rajendra Prasad (the first President of India and the President of the Constituent Assembly), barely five weeks after reference to the constitutional review in his official address to the joint sitting of the two Houses of Parliament, assumes significance. It is particularly significant because the BJP-led National Democratic Alliance Government has been vocally pressing for constitutional review since its last reign.

The NDA Government's resolve has been expressed by all the senior leaders of the party since the alliance gained absolute majority in the Lok Sabha in the 1999 general elections. The views of the government were articulated by Union Home Minister L.K. Advani. He announced in his address to the Federation of Indian Chambers of Commerce and Industry on November 21 that the government had decided to initiate 'far-reaching reforms in the administration, judiciary and the internal security system' to evolve an 'effective state' which could be an inspiring instrument of change in the economic sphere and simultaneously bring about rapid social development. The setting up of the Constitution Review Commission (CRC) flowed naturally from his intention to create an 'effective state'. He said that the changes to be made in the light of experiences and developments since independence would help in the creation of an effective state that could grapple with the challenges of the future and reliably guide the nation.

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INDEED, with the return of the National Democratic Alliance to power with absolute majority in the Lok Sabha, the BJP's unfinished discourse on constitutional change has begun sooner rather than later. The CRC mentioned in the NDA's election manifesto might now be appointed any time. Stung by their loss of confidence in the twelfth Lok Sabha by a singular vote, the NDA (the BJP in particular) has also included constitutional amendment for a fixed five-year term for the Lok Sabha and State Legislative Assemblies in the NDA manifesto. Several BJP leaders took this issue to electoral pulpits with a vengeance. The party and its intellectual campaign brigade are vigorously campaigning for it by highlighting the 'dangers' of instability. It is not unlikely that one or more constitutional 'reform' may be pushed through hastily, appointment of a CRC in January (as promised by Advani) notwithstanding.

However, the plans for a CRC and the insistence on a 'comprehensive constitutional review' belong to a different genre of discourse. Considered alongwith a range of discourses on India's constitutional system and practices initiated by the BJP during the past few years, such as change from the parliamentary to a presidential system, caretaker status of the government, convening the Rajya Sabha during the Kargil crisis, etc., the party and its partners are obviously indulging in political and constitutional brinkmanship. The fact that simultaneously with the desire for appointing a CRC to 'review' the Constitution, the party leadership began announcing desired changes in the Constitution indicated the party's preconceived agenda for the proposed CRC. It is true that certain aspects of the Indian Constitution and constitutional practices call for a healthy democratic debate and, if possible, a review. However, what makes the intentions of the votaries of the CRC a suspect is that political misuse of several constitutional provisions over the years and the resolve to stop such misuse has not found a place in this discourse. Further, several rules and practices could be set right without a constitutional amendment. They have neither been discussed nor are they on the agenda. Since the discourse on constitutional change now occupies a prominent space on the political and policy agenda, their critical examination is called for.

Systemic change—from parliamentary to presidential—has apparently occupied an extremely prominent

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place on the BJP's discourse on constitutional reforms for some years. Both Vajpayee and Advani had asserted in Patna on April 27, 1998 that examining the feasibility of changeover from the parliamentary to a presidential system would be the major tasks of the proposed CRC. Lest they were accused of changing the basic structure of the Constitution, they clarified that democracy, not the parliamentary system, formed the basic structure of the Constitution. Earlier, between 1994 and 1996 Vajpayee made three exhortations in 23 months for a debate either on a change of or reforms in the system of governance in India. On November 11, 1996, Vajpayee lamented:

> Neither Parliament nor the State *Vidhan Sabhas* are doing with any degree of competence or commitment what they are primarily meant to do: legislate. Barring exceptions, those who get elected to these apex democratic institutions are neither trained in law-making nor do they seem to have an inclination to develop the necessary knowledge and competence in their profession.

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THE debate over systemic change is an old one. Both the supporters of parliamentary and presidential forms have stuck to their arguments, which have by now been exhausted. Frequent elections in recent years, however, have lent an edge to the votaries of the presidential system. Without repeating both the arguments it needs to be reminded that those advocating the changeover from the Westminster model parliamentary democracy to the US model executive Presidency tend to give emphasis to stability over accountability. Significantly, when these questions were discussed intensely in the Constituent Assembly, emphasising accountability over stability, Ambedkar said:

> The daily assessment of responsibility which is not available under the American system is, it is felt, far more effective than the periodic assessment and far more necessary in a country like India. The Draft Constitution, in recommending the parliamentary system of executive, has preferred more responsibility to more stability.

Indeed, the situation has changed significantly since then; the need for greater accountability is growing in India due to decline in the party system. In fact, what has been referred to time and again as a fractured verdict, that is, the electorate's 'failure' to give a clear verdict in favour of one political party, is in fact a reflection of the fractured party system. Tragically, all the political parties and leaders who have spoken so forcefully in favour of the second Indian republic based on the US model, have not made a single suggestion regarding repairing the fractured party system they are part of. Neither R. Venkataraman, who had set the ball rolling in 1965 by sending a note to the AICC and has repeated his suggestions in the past decade, nor the BJP leaders, and others supporting their demand, have spoken even once about resuscitating the ailing party system in the country. In fact, each one of them has tried to benefit from it. No constitutional change is required to reform the party system. Electoral reforms, particularly a review of the first-past-the-post system, and a consideration of the partial list system as prevalent in Germany, state funding of elections, sharpening of the anti-defection law, auditing of the accounts of political parties and rules for ensuring inner-party democracy in political parties are measures that do not require constitutional change. These measures will also go a long way in ensuring political reforms necessary for a healthier political life in the country.

Similarly, a five-year fixed term for legislatures betrays the desparation of the political class to retain power for maximum duration with minimum responsibility irrespective of their capacity to govern. Even though the Prime Minister downward every prominent leader of the BJP and the alliance has insisted on examining this possibility, none seem to have critically examined as to what it really implies. Of course, some constitutional experts have mentioned a constructive vote of no-confidence alongwith a fixed term for the Lok Sabha and Legislatures, full implications of this measures in terms of ensuring accountability alongwith stability have not been considered so far.

Inherent in the NDA proposal is the basic questions whether parliamentary democracy is part of the basic structure of the Constitution. The question assumes significance because Advani has clearly said that democracy is the basic structure of the Indian Constitution, not the parliamentary form of government. In the Kesavananda Bharati versus the State of Kerala case, some judges gave a few illustrations of basic features, which cannot be amended or abrogated even by an amendment made under Article 368. They indeed considered democracy as a basic feature of the Constitution. However, Justice P. Jaganmohan Reddy clarified that parliamentary democracy was part of the basic structure. N.A. Palkhivala, who had argued for the theory of basic structure in the Kesavananda Bharati case, himself suggested to the Court a set of basic features which included the parliamentary form of government. The former Chief Justice, K. Subba Rao, while commenting on the judgment, said 'responsible government through parlia-

mentary executive' was part of the basic structure of the Constitution. Recently, in the P.V. Narasimha Rao versus State (CBI) case (1998), Justice S.C. Agarwal, who presided over a Bench, categorically said parliamentary democracy was part of the basic structure of the Constitution.

A fixed term of five years without the provision for dissolution may lead to dictatorship with the continuance of an irresponsible or unpopular government. The provision for dissolution of the House serves two purposes. First, it ensures accountability of the government to the House and of the representatives to their electorate. Second, it serves the purpose of a safety valve in the Constitution against dictatorial tendencies. A successful vote of no-confidence against the Council of Ministers without expressing confidence in another leader implies an appeal to the people to elect a new government. Though the proposal for 'constructive vote of no-confidence' as prasticed in Germany could be a good alternative, the right of the House to go to the people and the power of the people to elect a new House and, through the new House, to replace the existing government cannot be taken away.

The Vajpayee Government has claimed credit for non-interference with State governments during its previous stint, particularly for taking a principled approach on the use of Article 356. Though lack of majority in the Rajya Sabha was a major factor in their making virtue out of political compulsion, they still deserve the benefit of doubt. The misuse of the Governor's office has been directly linked to the misuse of Article 356. Yet, the BJP-led government filled the gubernatorial vacancies entirely on partisan and patronage considerations. The recent appointments of Governors have been relatively better. The drama enacted in Bihar where Governor S.S. Bhandari made the BJP's itch to use Article 356 very evident, is a case in point. It is pertinent that the BJP wants to retain this highly misused provision in the statute book. It is equally clear for now that neither the BJP, nor its alliance partners, are keen to consider the proposals made over the years by various committees to make the Governor's office non-partisan.

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Now that the general elections 1999 have been successfully completed and a new government with absolute majority in the Lok Sabha is installed, it may not be considered appropriate to raise the matters that were raised on partisan grounds, but sound trivial now. However, some of them were crucial as they raised some very fundamental questions regarding our constitutional practice. It is necessary to look at those questions in a non-partisan fashion as such situations may arise again. The first question is with regard to the role and legitimacy of the caretaker government; and second, regarding holding a session of the Rajya Sabha in an emergency situation, particularly if the Lok Sabha is dissolved.

The Opposition parties did not credit themselves with any glory in leaving the country under a 'caretaker government' for six months. However, while the Vajpayee Government was not expected to shirk the responsibility entrusted by the presidential request to carry on till a duly elected government took over, it should also have voluntarily accepted that it had only a limited legitimacy to govern and take major policy decisions. It should have, in all political and constitutional fairness, only carried out routine functions of the government. The image of the party and the government would only have been enhanced if they sought to build consensus on larger issues of public importance. Instead, the discourse on the rights of a 'caretaker government' let loose by the NDA to legitimise a series of debatable actions, including transfers of senior bureaucrats, has left a questionable legacy on this issue.

The role of the 'caretaker government' was debated first in the context of transfers effected by the Vajpayee Government soon after it became clear that elections would not be held before September-October; then in the context of the Kargil conflict, particularly when the government thwarted the demand from some of the parties and leaders to convene the Rajya Sabha. To begin with, in a knee-jerk fashion the government, the BJP and its allies and its 'intellectual campaign brigade' worked overtime to justify all actions because 'caretaker government' was not mentioned in the Constitution. Then, the BJP and the members of the ruling alliance discredited the demand for a Rajya Sabha session arguing that convening the House would be divisive during the 'war'. Campaigning overtime over electronic and print media that a Rajya Sabha (constitutionally one-third of the Indian Parliament) session would be 'constitutionally in order, but politically divisive' betrayed the party's discomfort with institutions and constitutional niceties. The clear implication was that Parliament, from which they draw their legitimacy, is divisive in nature!

True, the Constitution of India does not provide for a 'caretaker government'; it provides only for a

government and lays down procedures for its appointment and demitting office. However, the principles of legitimacy (derived from the popular mandate to govern) and accountability (enforced by an elected legislature), so essential to the system of democratic government, change the status of a government the moment it loses the confidence of the House and the legislative body is dissolved. The government then draws its legitimacy to rule only from the presidential request to it to carry on till the next elected government takes office, and not by virtue of a parliamentary majority and its collective responsibility to the Lok Sabha (which has been dissolved) as prescribed in Article 75(2) of the Constitution. It clearly, even though by implication, alters the relationship between the President and his Council of Ministers qualitatively. Though still constitutionally bound by the advice of the Council of Ministers, the President's political legitimacy to assert himself on issues of national interest and on functioning of the government is greater than the Cabinet.

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DISREGARDING the presidential advice for convening the Rajya Sabha because the President can convene Parliament only on the advice of the government and that the Constitution does not mention 'caretaker government' was a grave political and constitutional error. Though the President is bound under the Constitution to exercise these powers as well with the advice of the Council of Ministers (Article 74), the doctrine of necessity emanating from a border conflict under a caretaker government necessitated and justified a presidential initiative in this regard. However, a cacophonic campaign by the party and its 'intellectual campaign brigade' that the Constitution of India does not mention a 'caretaker government' successfully put the President on the defensive. Consequently, both on the question of convening the Rajya Sabha as well as on hurried and abrasive policy decisions and transfers and postings by the Vajpayee Government, the President chose to keep quiet. One wonders how the saffron constitutional experts will justify the existence of the Cabinet, which finds no mention in the Constitution.

Moreover, the President is under oath to 'preserve, protect and defend the Constitution and the law'. However, the calculated political squall over the role of the President vis-a-vis a 'caretaker government' seemingly left the President too over-cautious to react decisively on this issue. Article 85 (1) of the Constitution, for example, states:

> The President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

Article 86 (1) states:

> The President may address either House of Parliament or both Houses assembled together, and for that purpose require the attendance of members.

These two Articles clearly create the possibility of the Rajya Sabha session to be held independent of the Lok Sabha.

The pertinent question is: could the government have avoided a session of the two Houses of Parliament, using the same arguments if the Lok Sabha was not dissolved? Atal Behari Vajpayee is credited with leading a successful party mission to Nehru for a session of the Rajya Sabha in 1962 to discuss the China war. As the Prime Minister, he has lost the opportunity of his lifetime to re-establish accountability and legitimacy, victims of political machinations for three decades, at the centre-stage of Indian politics. In taking the lead in convening a session of the Rajya Sabha he would have added legitimacy to his leadership and strengthened his image as a non-partisan statesman. In fact, a greater show of strength and political accountability would have been to hold the session of the Rajya Sabha in Srinagar or Jammu.

The propaganda also unintentionally implied, rather perilously, that except for the ruling alliance all the other political parties are irresponsible and have a divisive agenda.

The Constitution of India and the constitutional processes in the country have been twisted by the political class to suit their partisan ends almost from the beginning. The large-scale misuse—Article 356 is the starkest example—began in the late sixties leading to the imposition of national Emergency in 1975. However, the restoration of the democratic process in 1977 did not stop the misuse. The politicians and political parties have also initiated the debate on systemic change by overplaying the fear of instability without attending to the root cause of instability—a weak and ailing party system. However, having ascended to power after waiting on the political sidelines of the country for nearly five decades, the BJP seems to be in a terrible hurry to consolidate its hold on power. The dangerous discourse it has set in motion from time to time to legitimise itself by delegitimising the Constitution, institutions and democratic processes, is fraught with immense dangers for India. ■

Justification for Constitutional Review

*Dr Vidya Bhushan Gupta

Constitution of a State is in fact a life-line and a guiding force for survival and governance. It is a supreme document. It sustains unity, security and politico-socio-eco-development of a nation. The role of constitution becomes more significant particularly in a federal polity where socio-cultural, religious diverties exist and where both territorial unity and social harmony become complementary to each other.

Same is true in case of Indian Constitution. The Constitution of India - as a constitutional document is a master piece with not many parallels. During the last five decades, it has become instrument in establishment of positive atmosphere condluctive to the growth of democracy, social justice and development.

But in no way a constitution is God made. If the time demands it can be reviewed. If need be it can be changed/ altered/amended/repealed, so that it stands the test of the time.

Hence no one can stop a natinn to review her constitutions as we live in a dynamic world, which is fast changing with the change in all socio-politic-Eco and cultural life. A debate is, therefore, going on about whether there is a genuine need of constitution review in one of the biggest democracy of the world. The B.J.P. led N.D.A. pleading for the Review of constitution and had raised this issue even during last Election by highlighting the dangers of instability. It tried to expedite this process just after getting absolute majority in the last Election. Even President of India, while addressing

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the joint session of the two houses of Parliament on October 25, last year refered his Government resolution for a fresh look on the Constitution of India in order to prevent political instability. The National Commission to Review the working of Constitution of India has, however, been constituted with the most eminant personalities of the time, in June, 2000. But B.J.P. leaders tried to announce the changes which they are manifesting even before the Consttitution of N.C.R.C. This created doubts in the minds of the people about their intentions. The former Chief Justice of India A.M. Abmadi pointed out "In the life of a country's constitution, 50 years is not a sufficient long period to call for its replacement. If the idea is to review the constitution in its entiεity, I am afraid it is pre-mature." But if the objective is to review certain grey areas only that may be different matter. Refering to the review of the Constitution move Professor C.P. Bhambri said :

> "It is a trap being laid by the B.J.P. and they will be successful in delightimising the constitution and raising in the minds of the people doubts about it."

Professor T.K. Oommen pointed out :

> "The B.J.P. motive is to convince the people that cultural nationalism will be more effective than the cultural pluralism endorsed by the constitution. Through the review they can communicate to the masses that mhere is an alternative way of building the nation."

Professor Dipankar Gupta said :

> "In normal circumstances, a review does not really call

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for such a hue and cry. But in this case, it is not in the national interest - it is motivated by sectional party interests."

~~Even the President of India K.R. Narayanan~~ Mr. A.K. Antony pointed out that "....Parliamentary democracy is best suited for the country where economic inequality between caste and religious communities persisted and where regional and language contradictions existed." While stressing that our recent experience of instability in Government is not sufficient reason to discard parliamentary system in favour of the presidential or any other system, he Mr. Sita Ram Yechury of the C.P.I. - M said :

> "The B.J.P. is trying to undermine the secular foundations of the Constitution. They have a theoretic Hindu Rashtra in mind and the RSS ub fact feels that the present constitution is un-Hindu."

The people and the political parties thus warned them not to alter the lofty ideals secularism, Democracy, Social Justice etc. etc. enshrined in the constitution. The N.D.A. leadership then announced that the basic features of the constitution shall not be tempered. The secularists and federalists, however, want to retain the existing constitution so that it should not become a pawn in the hands of Rightiests forces. They believe that the constitution contains the high ideals of socialism, secularism and integerity of a nation, Equality, social justice etc. Those who pleade for review stress that it is essential in the light of 50 years experiences to cure certain evils cropped up during this period such as :-

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1. Highly Centralised Constitution
   - To make it a true and genuine and federal with more powers - financial and otherwise - to the States.

2. Neither Parliament nor the State Vidan Sabhas doing with any degree of competence or commitment what they are primarily meant to do.

3. Most of elected members are neither trained in law-making nor do they seem to have an incliantion to develop the necessary knowledge and competence in their profession.

4. Instability and frequent mid-term polls - because of un-constructive vote of confidence.

5. Need for greater accountability.

6. Constructive vote of confidence.

7. Fractured verdict - i.e. electorates failure to give a clear verdict in favour of one political party.

8. Decline of party discipline.

9. Horse trading in parliament.

10. Faulty electoral system - lack of state-funding of elections, sharpening of the anti-defection law, auditin of the accounts of political parties and rules of ensuring inner party democracy in political parties.

11. No five-years fix term for legislatures and fixed term for L.S. if no alternative Government is formed, after the passage of vote of no-confidence.

12. Misuse of Governor Office and Art 356.

13. Lack of majority of party in power in Rajaya Sabha and

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its impacts on the working of Central Government i.e. stopping a bill passed by L.S.

14. The status of the caretaker Government.

15. Disregarding the presidential advice for convening the Rajya Sabha because the President can convene Parliament only on the advice of Government.

16. No penality for repeated disruptions of Legislative procedure.

17. Checks against imposition of National Emergency.

18. Criminalisation of Politics.

19. Checks against social and political violence including terrorism.

20. Corruption in High Offices.

21. Transfering part of provisions from part IV to Part III of the Constitution.

22. Parliamentary VS presidential form of system.

23. Reservation policy and decline of administrative efficiency.

24. Lack of cheaper, quicker, transparent dispersment of justice.

NDA leaders repeatedly stressed that certain aspects of the Indian Constitution and constitutional practices call for a healthy democratic debates and if possible a review also. We do agree that there is no harm of their critical examination in the light of experience of last five decades. But certain issues they raised recently have already discussed

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and thoroughly debated in the Consembly of India and were rejected. For example parliamentary VS Presidential system and giving emphasis to stability over accountability etc. etc.

They do not understand that most of these evils are administrative problems created by mis-government and mis-management and by indiscipled political parties. The parties are not behaving in a healthy way. The constitution of India and the constitutional process have been twisted by the political bosses and parties to suit their partisan ends from the very beginning.

Some of these evil can be occured by bringing about new amendments in constitution and taking up of Administrative machinary. If American Constitution drafted and adopted more than 200 years back, in the socio-Eco. back round of an non industrial, non neuclear, agricultural society has worked well without resort to review and by amendments (26) and almost always to confer greater liberal and eco rights to its citizen. Why not in Indian constitution.

If an unwritten British Constitution is working well what is wrong with our nation. What is wrong in the working of our democracy and constitution, which cannot be rectified by the available process of change. President K.R. Narayanan rightly said :

> "Today - we have to consider whether it is the Constitution that has failed us or whether it is we who have failed the Constitution."

Most of these evils would have been set right had the central Government adopted and implimented the Sarkaria

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Commission Report. The Sarkaria Commission had already made thorough study and review these constitutional evils before making concrete recommendation. But unfortunately its recommendation have not yet been accepted and implemented.

It is not the fault of constitution, which is sacred document and drafted by C.A consisting of the most eminent intellectual of that time. Constitution or review process cannot change human nature, nor create saints out of thonies. For changing the altitude, outlook and values of the people, we have to tap sources other than law and constitution. Need for development of good/healthy tradition and constitutional convention, is much more important than the review of the constitution. No constitutional change is required to reform party system.

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INDIAN CONSTITUTION : REVIEW OF RESERVATION POLICY

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On 15th August 1947, Dr. Rajender Parshad, than President of Constituent Assembly called the nation to resolve to :

"To create conditions in the Country when every individual will be free and provided with the wherewithal do develop and rise to his fullest stature.... when untouchablity will have been forgotton like an unpleasant night dream, when exploitation of man by man will have ceased, when facilities for the adimjatis of India and for all others who are backward, to enable them to catch up to others." **1**

To fulfill this solemn pledge i.e. to bring backward classes at par with forward classes, the constitution-makers provided constitutional machanism of reservation for these socially & educationally backward classes vide Article 15(4), 16(4), 46, 330, 332 and 340. The state is empowered to take special measures for the betterment of the deprived sections of the society. The constitution-makers had adopted this constitutional machenism for 10 years with the hope that after working of Indian Constitution, there would not be any need of reservation as the Indian republic would be able to establish an egalitarian system in the society by that time. Our constitution-makers were fully aware of the fact that the success of Indian republic depends upon the attainment of the egalitarian system of the society as Dr. Ambedkar had expressed his apprehensions and warned the nation thus :

"On the 26th January 1950, we are going to enter into a life of contradiction. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our democracy in peril. We must remove this contradiction at the earliest possible movement or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up." **2**

Fifty years of working of Indian constitution indicate that these contradictions have not been removed. Caste-politics has played havoc with the system. Even the benefits of reservation has been usurped by the dominent castes among the backward classes including schedule castes and schedule tribes. Instead of getting rid off reservation policy,

there is increasing demand for inclusion of various castes under reserved catagory. Though the Supreme Court of India has ordered to evolve a 'Cremy Layer' [3] for exclusion of those citizens of backward classes who have attained the status which is at par with non-reserved classes. However, the formula of cremy layer as envisaged by the Supreme Court of India is not applicable to schedule castes and schedule tribes. It is applicable to backward and other backward classes only. It is, therefore, worthwhile to review the existing constitutional provisions of reservation in order to make it more effective and to benefit a larger sections of the backward, other backward classes as well as schedule castes and schedule tribes, who have been denied this benefit so far. For this, exclusion those citizens who have attained the equal status with non-reserved classes of the society is need of the time.

Another malady which can be pointed out in the context of the present reservation policy, is in the matter of reserving constituencies for Schedule Caste and Schedule Tribes in Lok Sabha and State-Legislatures. At present certain Lok Sabha and State-Legislature constituencies have been reserved almost permanently, thus denying the democratic right - to represent their constituency, of other non-reserved castes. Similerly the people belonging to Schedule Caste and Schedule Tribe catagories in general non-reserved constituencies are also not getting opportunity of representing their constituencies due to age-old social structure which denies equality to these catagories.

The basic aim of the reservation policy either in matters of jobs or elections was not only the amelioration of the deprived classes but establishment of social cohesion also. To achieve this twin objective of apliftment of socially & educationally depressed classes and bringing about social cohesion among all sections of the society, let me propose following ammendments in the constitution for your kind consideration :

1. **A new clause (5) to Article 15 be added -**

15 (5) - Nothing in the Article or in clause (2) of Article 29 shall prevent the state from making provisions of cremy layer regarding socially & educationally backward classes of citizens or the Schedule Castes and Schedule Tribes so as to exclude those citizens of the classes who comes under the cremy layer to get benefits of provisions made under Article 15 (4).

2. **A new clause (4 B) to Article 16 be added -**

16 (4 B) - Nothing in clause (4) and (4 A) shall entitled a citizen, belonging to backward class or other backward class, Schedule Caste, Schedule Tribe, to claim the benefits of the provisions made by the state under this Article if any of his parents, has already taken the benefits, other than class IV jobs, of such provision.

3. A new clause (3) to Article 102 be added -

102 (2) - A person shall be disqualified for being a member of Lok Sabha from a constituancy, reserved for Schedule Castes and Schedule Tribes under Article 330, if he has already been a member from such a constituancy for two terms.

Provided that this shall not disqualify him for being elected and for being a member of Lok Sabha from any general constituancy.

4. A new clause (3) to Article 191 be added -

191 (3) - A person shall be disqualified for being elected as and for being a member of Lagislative Assembly and Legislative Council of State from any constituancy reserved for Schedule Castes & Schedule Tribes under Article 332, if he has already being a member from such a constituancy for two terms.

Provided that this shall not disqualify him for being elected and for being member of Lagislative Assembly and Lagislative Council of State from any general constituency.

5. A new clause (4) to Article 330 be added -

330 (4) - The seats shall be reserved from different constituencies by rotation and from no one constituency, seat shall be reserved for more than two terms continuously for Lok Sabha.

6. A new clause (7) to Article 332 be added -

332 (7) - The seats shall be reserved from different constituencies by rotation and from no one constituency seat shall be reserved for more than two terms continuously for Lagislative Assembly of the State.

References :

1. C.A.D., Vol. V, p. 21
2. C.A.D., Vol XI, p. 979
3. Indira Sawhney V/s Union of India, A.I.R. 1993, S.C. 477

4 (10)

Tensions areas in Indian Constitution : Centre –State Relations**

* Dr. Ramesh Kumar Madaan

Abstract

The Centre-State relations remained under stress and strains since the operational dynamics of Indian Constitution. Ever since the Constitution was framed, the states felt deprived. Majority of the Chief Ministers, past and present alike, have at one time or another felt the crunch. So long as the Congress was in power at the centre and in the states, there was almost no challenge to the centre's authority except in few cases.

The fourth general elections of 1967 brought some far-reaching changes in the political structure of the country in general and centre-state relations in particulars. The non-Congress governments were not prepared to follow the policies of the centre. The states disagreed on national priorities. Some of the state government had their different socio-economic policies, ideologies which they want to implement but did not have sufficient resources for the same purpose.

EMS Namboodripad made threatening assertions in Kerala and demanded a clear-cut demarcation of centre-state relations, a cry, that was soon taken up by DMK in Madras, United Front in West Bengal and Akali-coalition in Punjab. Infact Kerala and West Bengal adopted a mild hostile attitude towards the centre.

The problem is against over centralization while some feel there is nothing wrong with the constitution and malady lies in its implementation. More problems lies with the system as was announced by the National Democratic Alliance Government representing even the regional political parties like SAD (B), National Conference, DMK, TDP, and others. But interesting factor is that the review committee does not have any person specialist in the political system but has only technical experts. Here it is pertinent to mention that regional political parties are not clear to their stand. Some political parties like National Conference goes to an extreme end, while the SAD (B) talks of the traditional federal system.

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In fact, the traditional federal definition has changed. The only change we need today is the removal of irritants in the centre-state relations like amendments in Article 356 to make more judicious, because we find frequent abuse of Article 356 by imposing President's rule which undermined democracy and jeopardized and autonomy of the states and thereby giving rise to secessionist tendencies and insurgency movements. The electoral malpractices have contributed to election of leaders devoid of vision and far-sightedness and integrity. Abuse of public authority, casteism, communalism, criminalisation, corruption, parallel economy and the parallel are the order of the day. The removal of Article 370 from the Constitution, the amendment in the powers of the Governor and the President, the role of these important functionaries need to be redefined in the context of coalition governments - Article 252, 255, 352, 355, 356, 360 needs to be restructured.

The financial powers to the states also need to be redefined. Though the states have the men power, energy, raw material and infra-structure. Under such circumstances, why should states be denied its legitimate rights to install the industries. If the states are totally made financially independent then they would be in a better position. The extra constitutional authorities mainly planning commission should change their style of functioning.

The Constitution needs the removal of irritants in the center-state relations and not to function like traditional type of federation when we are entering in the 21st Century. It is the need of the hour to review the constitution so that constitution must fulfill the aspirations and expectations of the masses as well as decentralization and good governance i.e participation, transparency and accountability as well as development i.e. empowerment, efficiency and equity in the Indian context.

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CONSTITUTIONALISM AND DEMOCRACY IN INDIA: PARTY AND ELECTORAL REFORMS HOLD THE KEY TO SURVIVAL

Mahendra Prasad Singh*

A Phony Debate

This paper argues against the view expressed in certain quarters for a switchover from the present parliamentary federal system to the presidential system in India.[1] It has harmed rather than helped the cause of democracy and political stability in this country. Whatever their intention, the net effect of the inessential rhetorics of changing the whole system has only served to divert attention from where the reforms are needed to where the constitutional restructuring is not only unnecessary but also undesirable. Democracy is better served by the parliamentary federal system than by a presidential federal system. Outside the U.S.A. the latter has often either degenerated into authoritarian regime (e.g., Latin America) or engendered the desire to go back to the parliamentary system (e.g., in India's neighbours in South Asia). Even in

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the U.S.A., as also elsewhere, another problem with the presidential system has been occasional constitutional deadlocks between separate and coequal organs of the government that in fact may become more destabilizing in a new democracy than the usual instability of the parliamentary government. Moreover, the collective parliamentary cabinet is better suited to accommodate the social and regional diversities of India's subcontinental society than the "lonely" presidential executives at the Centre and in the States. The Emergency interlude in India (1975-77) showed that even the parliamentary cabinet was not a foolproof institutional guarantee against authoritarian intervention. However, the U.S.A. style neo-monarchical presidential system would probably provide an even more hospitable setting for authoritarian takeover of the regime. For such a system's mechanism of divided and separate powers more often than not either gives in to deadlocks and anarchy or to executive's aggrandizement. If anything, the Fifth French republican and post-communist Russian combination of the presidential with the parliamentary system would appear to be more desirable for India rather than the U.S. presidentialism. This is for two reasons: (a) over half a century of India's experience with parliamentary system in that model would not entirely go down the drain; and (b) a directly elected President and a Prime Minister elected by the Parliament would countervail each other as well as they must cohabit to let the system work. Even the Swiss type

collegial presidential executive -- the Federal Council -- with a rotating President from among seven would probably be a better option for India than the American Presidency.[2]

But my argument is that even these alternatives are not really necessary for India to go for if we put our finger on the real reforms required. Instead of Quixotically tilting at the windmills of whole constitutional restructuring, what we really need are party and electoral reforms. Lessons of comparative politics are clear enough. Wherever representative democracy has become functionally viable and parliamentary or parliamentary federal government has become dynamically stable -- e.g., England, Canada, Australia, New Zealand, Western Europe, Japan, pre-1989 India, etc. -- a constant political factor that is common to all, despite some variations, is well established or atleast reasonably well functioning electoral and party systems. That even coalition governments need not be uniformly unstable, provided there are democratically disciplined party systems, is shown by the political experience of West Bengal, Kerala, India itself that have proved to be exceptional in the prevailing political scenario in India today. The onset of political instability in India clearly coincides with decline of parties and party system, mounting social and cultural conflicts and alarming increase in corruption and criminality in politics and economy.

In view of the foregoing it would appear to be an enormously sensible idea to include the following as one of the main terms of reference for the 11-member-Commission set up in February 2000 by a Union Cabinet resolution to review the working of the Indian Constitution under the Chairmanship of former Supreme Court Chief Justice M.N. Venkatachelliah:

> The Commission shall examine in the light of experience of the past 50 years as to how far the existing provisions of the Constitution are capable of responding to the needs of efficient, smooth and effective system of governance and socio-economic development of modern India and to recommend changes, if any, that are required to be made in the Constitution within the framework of parliamentary democracy without interfering with the basic structure or basic features of the Constitution (*The Hindu*, New Delhi, 14 February 2000: 1).

The Real Issues

It is symptomatic of the approach of the framers of the Indian Constitution that while they made the longest basic law for the country in the world, they left the party system entirely to be evolved through convention.[3] Elections, to be sure, got a chapter (Part XV) but rather a small one with only six Articles that do not mention political parties at all. Even parliamentary statutes relevant in this context like the Representation of the People Act, 1950 and 1951,

the Companies Act, 1956 (Sections 293A and B), the Income Tax Act, 1961 (Sections 13A and 139, 4B), and Foreign Contribution (Regulation) Act, (Sections 4, 5, and 6), mention political parties incidentally in the larger frameworks of representation and economic laws. The Anti-Defection Act, 1985, added to the Constitution by the 52nd Amendment, refers to political parties directly but only in the limited context of defections of MPs/MLAs from the party on whose ticket one was elected to a House to another party and their consequent disqualification for membership of the House, excepting in case of a split in the "original political party . . . [where the splitting] group consists of not less than one-third of the members of such legislature party" (Section 3). The Tenth Schedule has nothing to do with organization, ideology, and working of political parties as vital links between the democratic state and the civil society.

Thus the modernizing political elites in India at the dawn of Independence from British colonial control, who set up a regime of heavily regulated mixed economy from 1950s to '80s, preferred "free enterprise" principle in the arena of party political processes. In adopting this approach they were partly influenced by the British and old Commonwealth of Nations, where parties have grown as a matter of convention without constitutional or legal fiat, and partly reassured by the vigour of the civic action emanating from the civil society during the freedom struggle. In

retrospect, it would appear to be a myopic vision for neither medieval nor modern India have had much to show for strong institutions of the civil society on a sustained basis as a countervailing force to the strong or "overdeveloped" or "strong-weak" state.[4]

Particularly since the 1970s the decline of the party system and the growing corruption in elections, government, and the economy have revealed a serious crisis in political institutions and developmental state to an extent that the very practice of parliamentary government at the Centre and in some States has become problematic. No government at the Centre for a full decade (1990s), excepting the Rao Congress administration could complete its term on account of lack of parliamentary majority, resulting in frequent and fruitless recourse to mid-term polls. Even the Rao Government subsequently came under the clouds for seeking to survive by promoting defections and splits and finally bribing some MPs to win a vote of confidence. Politics of defection, i.e., individuals and groups of legislators changing party allegiance on the legislative floor in return for money or ministerial berths, that had spread like an epidemic at the State level since the late 1960s surfaced on the supposedly more august floor of the national Parliament as well. We hardly have democratically constituted political parties in India today, only packs of personal loyalists and retainers, with rare exceptions. It is difficult to imagine how a

democratic political system can be worked through undemocratic political parties.

Caste and community identities, reviving on the organizational debris of political parties, moreover, have also often rushed to gate-crash into the political process and masquerade as political parties. In an atmosphere of general decline of political and economic institutions of governance and corporate management in relation to the hapless public political elites have indulged in unabashed political populism and dynastic domination all around as a shortcut to party-building that in reality proves to be the high road to party-destroying. These tendencies commonly pervade the federal as well as regional levels of politics.

The most serious miscarriage of democracy has been caused by what has come to be known as criminalization of politics. In July 1993 the Government of India was constrained to set up a committee at the administrative level headed by N.N. Vohra, the then Home Secretary, "to take stock of all available information about the activities of crime Syndicate/Mafia organizations which had developed links with and were being protected by Government functionaries" (*Vohra Committee Report*, 1993:1). The Report submitted in October 1993 made the following chilling submission, among others:

> CBI has reported that all over India crime syndicates have become law unto themselves.

> Even in smaller towns and rural areas musclemen have become the order of the day. Hired assassins have become a part of these organizations. The nexus between the criminal gangs, police, bureaucracy and politicians has come out clearly in various parts of the country. The existing criminal justice system, which was essentially designed to deal with the individual offences/crimes, is unable to deal with the activities of the Mafia: the provisions of law in regard to economic offences are weak; there are insurmountable legal difficulties in attaching/conficating the property acquired through Mafia activities (*Vohra Committee Report*: 2).

There is evidently no follow up action by the government on this alarming Report.

During the 1998 Lok Sabha elections, an eminent panel consisting of Justice Kuldip Singh, Madhav Godbole, C. Subramanium and Swami Agnivesh after a careful scrutiny identified as many as 72 Lok Sabha candidates facing serious criminal cases. The findings categorized by parties are given in Table 1. It is evident from the Table that the majority of criminals enter the electoral fray through the medium of National and State parties, including the two largest all-India parties! The BJP has the dubious distinction of fielding the largest number of criminals, followed -- in this order -- by Samajvadi Party, Congress, BSP, and RJD. Another alarming fact is that the bulk of the

criminal candidates fell in the categories of serious crimes, which include persons already charge-sheeted by a judicial court or by an investigating agency and those with long crime history (these additional items of information could not be reported in Table 1 for lack of space but are available in the source cited, *Outlook*, 23 February 1998: 10-11.

Table 1

Candidates with Criminal Background by Parties in 1998 Lok Sabha Elections

Parties	No. of Criminals
National Parties	
Bharatiya Janata Party	17
Indian National Congress	9
Janata Dal	1
Bahujan Samaj Party	6
Samata Party	2
State Parties	
Samajwadi Party	12
Jharkhand Mukti Mocha (s) & (M)	3
Shiv Sena	2
All Inndia Anna Dravida Munnetra Kazhagam	2
Registered (Unrecognized) Parties	
Rashtriya Janata Dal	5
Rashtriya Janata Party	1
Rashtriya Haryana Lok Dal	1
Himachal Vikas Congress	1
Karnataka Vikas Party	1
Bihar Jana Congress	2
Communist Party of India (Marxist-Leninist)	1
Janatantrik Bahujan Samaj Party	1
BJP rebel	1
Independents	4

Note: Classification of parties according to Election Commission (1998: 1-5). However, RJP, BJC, JBSP, and BJP rebels are not mentioned in the Report for some technical reasons.

Source: *Outlook* (New Delhi), Vol. IV, No. 7, 23 February 1998: 12-13.

In view of this alarming scenario on the party and electoral front, the only viable remedy that appeared to be an urgent imperative to give democracy a chance to survive on the Indian soil is to go for bringing political parties under a comprehensive piece of legislation or under the Constitution itself. It may be interesting here to draw attention to the valuable work done in this respect in Canada by the Royal Commission on Electoral Reform and Party Financing appointed by the Government of Canada in November 1989. This Commission sponsored a score of academic studies on the problem as well as it held hearings itself and submitted its recommendations in four volumes in 1993 (Government of Canada, 1991-93). It is an illustrious democratic odyssey the Government of India may emulate. In our neighbourhood, the latest Constitution of Nepal has incorporated the provisions regarding the formation and conduct of political parties.

Party and Electoral Reforms

Over the years a number of citizen's as well as parliamentary committees have been proposing packages of electoral and party reforms. Among these, the more prominent ones have been the committees appointed or chaired by Jayaprakash Narayan or Justice V.R. Krishna Iyer respectively in the late 1970s and early '80s on the civic front and the committees headed by Dinesh Goswami and Indrajit Gupta on the parliamentary front in the early and

the late 1990s successively. The Law Commission of India in its latest report (1999) has also proposed a comprehensive package of reforms in our electoral and party system.[5] Less far-reaching reforms have also been proposed from time to time by the Election Commission to the government. However, suitable legislations have not been forthcoming.

One must, however, hasten to add that the active insistence on the existing laws and bylaws in the conduct of elections by the Election Commission under T.N. Seshan and M.S. Gill and their colleagues have brought about a welcome wind of change on the election scene. But this is obviously not enough. Unless a comprehensive package of electoral and party reforms are brought about by parliamentary legislation, parliamentary federal governance in India would go beyond the pale of practical politics.

Taking off from the foregoing discourse on the theme, the argument of this paper is that the effort at reforms must be concerted and directed at atleast three levels: (1) conduct of free and fair elections, (2) party-building as vital links between the people and the government, and (3) the federal context of the polity to forestall fragmentation of parties and promote the growth of democratically disciplined and federal party organizations that are an essential condition for stable parliamentary governance.

The Election Commission as a central agency is almost wholly dependent on the State governments and their administrative personnel in the conduct of elections. It is a constitutional agency without teeth. It should be turned into a fully judicial agency, subject to ultimate judicial review by the Supreme Court. It should also be vested with full disciplinary executive authority over the bureaucracy engaged in election duty during the pendency of the polls. Its disciplinary actions must be irreversible by the regular executive authority of the State governments. The appointment of the Election Commissioners ought to be made by the Union Executive in consultation with the Chief Justice of India and the leader of the Opposition in the Lok Sabha, subject to the ratification of the nominations by the Rajya Sabha. This would transform the Election Commission, a central agency, into a federal agency.

Party-building should aim at bringing about an enabling legislation or Election Commission regulation requiring political parties to constitute themselves into democratic organizations with regular elections and internal party democracy by strict adherence to their own bylaws and to the constitutional values of the Republic. Besides, the shady underhand deals of party financing must be brought within strict legal regulation, forcing parties to maintain transparency in sources of their funds and accounts of their expenditure. A meaningful degree of state funding of

elections should be worked out, as recommended by the Indrajit Gupta Committee recently. The conduct of parties both in the mass public and the legislature must be democratically constructed from the grassroots upwards.

Finally, a federal aggregation process must be set in motion so that party fragmentation is reversed. The party should be defined meaningfully in terms of minimum percentage of votes, organizational and programmatic traits, and functional coherence in government and opposition.

We are a parliamentary federal system but we continue to elect our party leaders as if we were a parliamentary system pure and simple. Instead of electing our party leaders in the Parliament by the Members of Parliament in principle, we ought to consider federalizing this process. We have here atleast two models to choose from. In the American federal presidential system the two major national parties choose the candidates for the Presidency of the Republic at national leadership conventions of the parties concerned where the State delegations vote en bloc as States. In the Canadian parliamentary federal system parties choose their leaders at their national conventions where the provincial delegates vote as individuals.[6] It is my submission that the Canadian practice is more suitable for our parliamentary federal system and purposes. This would encourage parties to federalize themselves in pursuit of parliamentary power at the same time as the electorate would have the advantage of a nationally visible set of

party leaders to choose from as the prospective Prime Minister of India.

Notes

[1] See Noorani (1989), Singh (1994), and Singh and Saxena (eds.) (1999).

[2] The founding fathers of Indian republic at the dawn of Independence had a well informed and threadbare debate about constitutional forms. See particularly the two most erudite speeches on the floor of the Constituent Assembly by Dr. Sachchidanand Sinha, the interim President, at the outset and Dr. B.R. Ambedkar, the chairman of the Drafting Committee, at the end of the debate on the Draft Constitution in its defence. Dr. Sinha drew attention to the British, French, Swiss, and American Constitutions among others, while Dr. Ambedkar mostly talked about the British, American, and Australian Constitutions. See the *Constituent Assembly Debates, Official Report*, Books 1 & 2, pp. 2-7 and 31-44 respectively. 3rd reprint by Lok Sabha Secretariat, 1999. Sir B.N. Rao, the legal advisor of the Constituent Assembly, had also prepared a Note on major constitutional systems of the world and circulated it for the benefit of the members. The Canadian Constitution was only mentioned in passing by these speakers, which would, in retrospect, appear to be rather strange. For no other two polities and societies are more similar than India's and Canada's.

[3] In presenting and defending the draft Constitution in the Constituent Assembly, Dr. Ambedkar remarked that the success of the new Constitution would primarily depend on (a) growth of democratic culture and convention, and (b) the bureaucracy or administration. I wish he had not specifically omitted the political parties in this context

that are today proving to be the Achilles heel in the comprehensive decline of political institutions in the country. See the *Constituent Assembly Debates*, Book 5, pp. 575-582.

4 Neo-Marxist Bardhan (1984) regards the Indian state "Overdeveloped", liberal political economist, Myrdal in his classic *The Asian Drama* characterized the states in South Asia as "soft", while the political scientists Rudolphs (1987) consider the Indian state as "strong-weak." The last characterization appears nearer the point.

5 These proposed reforms are reviewed in M.P. Singh and Rekha Saxena (2000: Chapter 8).

6 See Herman Bakvis (eds.) (1990).

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PACE OF SOCIO-ECONOMIC CHANGE AND DEVELOPMENT UNDER THE CONSTITUTION: A RETROSPECTION

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The setting up of the National Commission to Review the Working of the Constitution is indeed a historic event. It would provide rare opportunity to the Indian nation to debate certain fundamental issues concerning the 'pace of socio-economic change and development under the Constitution' in the light of the experience of past 50 years. In fact, the study of the 'pace of socio-economic change and development under the Constitution' is one of the ten significant areas identified by The Commission.

The Constitution of India is committed to all round socio-economic development of every citizen of India as is clear from The Preamble, Fundamental Rights, Directive Principles and many other Articles. However, during its 50 years life, it has not been able to provide minimum level of living standard and living with dignity to all the citizens. Over the period of time the inter-personal disparities have increased and a sizable proportion of Indian population is still living below the poverty line. They do not have the access to basic needs – literacy, health, safe drinking water, nutritious two-square meals, minimum clothing, shelter, etc. – of human life. Fundamental rights have the meaning only after a person attains a certain minimum level of living

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mentioned above. In terms of composite human development index (HDI), India still ranks 134 in the descending order. How can a person living in sub-human socio-economic conditions understand the meaning of liberty of thought, expression and belief, etc. In fact the cherished goal of 'growth with social justice' is still eluding the common Indian.

Evidently, the socio-economic development is a complex and composite phenomenon. Mere growth of national and per capita income cannot assure a decent living to each and every citizen of India. Downward percolation of the benefits of growth is equally important. Whatever, may be the social system – socialism or market economy – the best performance evaluation and tuning parameter of allocational efficiency is the stage and pace of socio-economic change and development in a system.

The builders of the Indian nation and the architects of the Constitution had opted for a mixed economy primarily guided by the pivot of planning mechanism. Recent spate of liberalisation, privatisation and globalisation (LPG)or the WTO regime is a sort of U-turn. A system nurtured in a protected, planned and supportive environment for more than four decades has been suddenly left to the free play of the market forces. The performance evaluation of the system in the first four decades and in the current decade with special reference to the Constitution is need of the hour. It is in this context that by analysing the pace of socio-economic change and development with reference to the provisions of the Indian Constitution, this paper is an attempt to evaluate the synchronisation of the socio-economic development policies with the

Indian constitution. In the non-synchronised area, paper proposes the amendments in the policies and the Constitution wherever required.

Analysis

The model dreamt of by the pioneers of Constitution was of making the country on a socialist pattern. The Preamble, the Fundamental Rights and the Directive Principles are indicative of the fact that consistently as per the Constitution the system was to be geared up on a socialistic pattern. The pre-requisite for such a model is a centralised planning system. Keeping in view the objective of the paper we have first analysed the Economic and Social Planning Mechanism and then the major sectors of the economy like agriculture, industry and tertiary since the type and pace of development in these sectors determines the pace of socio-economic change and development.

Economic and Social Planning

Socio-economic Planning has emerged as a powerful tool for development in India. The Directive Principles of State Policy lay down that the state shall strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice - social, economic and political - shall govern all the institutions of national life. The achievement of these goals calls for a planned development of the country based on national consensus in formulation of policies and shared action. In a large and diverse country like that of ours, with a dual polity and administration, it involves a continuous and wide ranging interaction between different constituents.

Constitutional Provisions

Planning being a matter of common interest to Union and States, the entry appears at no.20 of List III relating to "Economic and Social Planning". Although the constitution does not contain explicit provision for a Planning Commission but the Preamble and the Directive Principles give an ample justification for it. From the very outset, Indian Constitution and the Government of India considered Planning as the vanguard of socio-economic development of the Indian people. The Planning Commission is expected to prepare a blue-print in consultation with the States and in accordance with the broad guidelines and policy approved by the National Development Council (NDC) on which both the Union and State Governments are represented. After approval by NDC and finalisation by the Union Government a Five Year Plan is to be implemented through a State Machinery. It is made operational through budgets of the Union and State Governments. So, from the broad perspective, the main problem is how to reconcile the need for centralised macro-level planning with the constitutional imperatives of divided and concurrent powers, under the modern world conditions.

A general complaint of the State Governments is that they are required to adhere to unduly rigid and detailed Union directives mainly because of their dependence on the Union Government for plan and non-plan funds. Most of the States maintain that they are not given a due opportunity to participate at the decision making stage of national planning. States are consulted only after the broad features of the Five Year Plan are already cast. They are given a little freedom and flexibility

in formulating the details of the schemes concerning their regional needs and aspirations of their peoples. This freedom is clipped with (i) scrutiny mechanism; (ii) the mechanism of central assistance and earmarked outlays and (iii) the virtual control of Centrally Sponsored Schemes. All this has given rise to demand for autonomy by different States in different formats. Sarkaria Commission has already given its recommendations about the various aspects of Centre-State relations. Almost all the States and political parties had submitted their memorandum to the Sarkaria Commission. In view of the National Commission to review the constitution all the States, political parties and other people ~~and~~ are grappling with their views on autonomy for onward submission to the Commission.

Problems

Although an elaborate system of planning has been developed in the country but still there are certain problems in the Union-State relations in this regard. The multi-level planning framework has not become effective in the country because :

(i) The States are not involved sufficiently in national planning.

(ii) Over the years the Planning Commission has come to function as a limb of the Union Government rather than a truly federal institution.

(iii) The role of NDC, as institution to provide guidance in national planning has not been effective and has been characterised by mere formal approval of plans prepared by the Planning Commission.

(iv) States' initiative in planning has been adversely effected because there is a too detailed a scrutiny by the Centre of States' Plan proposals. The Centrally Sponsored Schemes most of the times do not match with local initiatives and priorities. Because of dependence on central assistance and mechanism of earmarking outlays, States have virtually a negligible freedom to manoevour allocation of resources among the competing development heads.

(v) Distortions are introduced in the State Plans on account of matching principles. The lure of 50 per cent central assistance induces the States to accept some of the schemes even though they themselves do not give high priorities to them.

(vi) The uniform approach and contents generally followed in case of Centrally Sponsored Scheme do not take into account the wide diversity of the local situation.

Solution

(i) Strengthening of State Planning Boards and incorporation of their plans in the central plans, of course, in consultation with the Planning Commission is the urgent need.

(ii) The NDC should be reconstituted under Article 263 of the constitution and should be conferred wider powers. The NDC should emerge as the highest political level inter-governmental body for giving directions and thrust to the planning development of the country.

(iii) Limited scrutiny of State Planning Schemes by the Planning Commission.

(iv) Restructuring the Working Groups and giving representation of States on them.

(v) Association of State Planning Boards right from the initial stage preparing the Approach Paper.

(vi) Arbitrariness or discretion in the transfer of resources should be done away with.

(vii) Planning Commission should mainly be a recommendatory body and the allocation of funds, on its recommendation to the States should be governed by some objective formula.

Agriculture

Entry 14 of List II in the Seventh Schedule pertains to agriculture and ancillary matters. However, many agriculture based items (entries 28, 42-45,47,51-52,56-57,59,63-66,69,81-82 and 97 in List II) have been included in the Union List and concurrent List (entries: 14-18,21,26-28,30,32,45-48,50,52-54,58-60 and 63 in List III). Clearly, there is a very long list of certain crucial functions pertaining to agriculture and related activities which are directly/indirectly undertaken by the Union Government. States are dependent on the Union Government for overall planning and coordination of agricultural development, financial and technical assistance for planning, requirement of key agricultural inputs, credit, support price, import-export policies, etc.etc. The result is that instead of planning being responsive to local situations, it has virtually become a stereo-typed system of schemes for the whole country with its immense diversity.

By virtue of entry 33 of List III Parliament has enacted the Essential Commodities Act, 1955. The Act gives powers to the Union Government

to control production, supply, distribution, trade and commerce in essential commodities. The definition 'essential commodity' in section 2 of the Act includes, inter alia, sugarcane, foodstuffs, edible oil-seeds and oil, raw cotton and raw jute. Entry 34 of List III, concerning 'price control' is functionally related to entry 33 of that list and has, indeed a much wider coverage.

Agro-industries, so essential for value addition to agricultural produce, are covered by the First Schedule to the Industries Act 1951 enacted under entry 52 of List I. All this along with the centrally sponsored schemes in the agriculture and guidelines from the Planning Commission and Central Ministries, has helped the Union Government to make large and undue in roads into the sphere of agriculture. Over the period of time such a policy has become hindrance in the way of independent development of the agricultural sector of many States. It is because of these facts that agriculture, being a state subject, is virtually regulated and governed by the Union Government.

Solution

Sarkaria Commission recommended that centrally sponsored schemes should satisfy the criteria laid down by the Ramamurti Committee and in such matters states should have a greater say. However, to us, the Union Government's role and interference in the development and planning of agriculture needs a serious review keeping in view the fast changing scenario under the LPG and WTO regime. There is an urgent need that the Union Government inhibiting role and

undue regulation in the agricultural sector should be minimised by inserting suitable amendments in the Constitution especially in the Seventh Schedule. It is suggested that entry 33 of List III should be deleted because it encroaches upon the States' autonomy in the development of agriculture.

Forests

Forests, another very important area for socio-economic development and environment, was originally a state subject. The 42nd Amendment to the Constitution (1976) transferred it from the State List to the concurrent List (entry 17A of List III). Sarkaria Commission recommended its retention on List III with some relaxations to the States in certain clauses of the Forest (conservation) Act, 1980. To us, a uniform forest cover for each State may be undesirable. As such it needs a review. After a serious review, the forest cover should be refined, in consultation with each and every State keeping in view their geographical and agro-climatic conditions and requirements, for each individual State. After this exercise the subject should be reverted back to List II as the States can develop and manage the forests in a much efficient manner keeping in view their own requirements.

Industry

Industry forms a vital sector in the socio-economic development of the country. Need for protection to the indigenous industry as well as control over key sectors was recognised even before Independence. The Industrial Policy Resolution, 1948 and later the Industrial Policy

Resolution 1956 are a landmark in the industrial development of the country. As a result, the heavy and basic industry and necessary infrastructure was developed. In addition to the industrial policy resolutions an other important step was passing of the Monopoly and Restrictive Trade Practices Act in 1969.

The Industrial Policy Resolution 1948 was followed by a comprehensive enactment, namely, the Industries (Development and Regulation) Act, 1951. The Act has so far been amended on many occasions. This act brought under Union's control the development and regulation of a number of important industries, regulation of which was deemed expedient in public interest. These industries were placed in the First Schedule of the Act. After the announcement of the Industrial Policy Resolution, 1956, by Amending Act (1957), passed under Entry 52, List I, the First Schedule of the Act was replaced by a more comprehensive one. The Act provided for the constitution of Advisory and Developmental Councils to advise the Government of India on matters concerning the development and regulation of industries by using the mechanisms like registration, licensing and investigation.

Constitutional Provisions

The subject 'Industry' has been enumerated as entry 24 in List II. However, it is expressly subject to Entries 7 and 52 of List I. Because of this, the States can be denied competence only to the extent Parliament by law makes the requisite declaration under entry 52 of List 1. Entry 7 of the List 1 refers to industries declared by Parliament by law to be

necessary for the purposes of defence. Further in the wider public interest Parliament may, by law, declare Union control of any industry.

Problems

(i) In Entry 52 of List 1, the expression 'in public interest' is very wide and can bring any and every industry within the scope of Entry 52.

(ii) The Industries (Development and Regulation) Act has been used by the Union in a manner so as to acquire near total control over the industrial sector. Increase in the scope and extent had been attributed by the Union Government to the needs arising out of planned economic development and the concept of mixed economy adopted by the country.

Solution

(i) Entry 52 of the List 1 should be modified and limited to only core industries of crucial importance for national development and those should be defined in the Entry itself. But the concept 'public interest' : if at all it is to be retained its dynamism has to be adopted and attuned from time to time to the changing socio-economic conditions.

(ii) There should be a periodic review to determine whether in respect of any of the industries the Union control should be continued, relaxed or lifted. Such a review may be undertaken by a committee of experts on which the State Governments should be effectively represented. This will, inturn, help foster the needed coordination and consensus between the two levels of governments. The result of the review may be placed before the NDC.

(iii) States should be given ample funds to provide sufficient conditions for growth of small industries. Improved local planning, infrastructure and policies of technology support, constitute pre-requisite for healthy development of small scale industries.

Trade and Commerce

Free flow of trade and commerce within and across the borders is an important pre-requisite for ensuring proper socio-economic development. Indian Constitution contains special provisions to protect this freedom. Article 19(1) (g) in Part III guarantees to every Indian citizen the fundamental right to carry on trade and business, subject to such reasonable restrictions as may be imposed in the interest of general public. Article 301 to 307 of Part XIII of the Constitution also deal with this freedom.

Article 302 enables the Parliament to impose restrictions by law on the freedom of trade and commerce between one state and another or within any part of India as may be required in public interest. The States' capability to restrict this free flow has been limited by Article 303 (1). But Article 304 authorises a State by law impose on goods imported from other States, any tax to which similar goods imported from other States, any tax to which similar goods manufactured or produced in that State are subject. Similarly a State may by law impose reasonable restrictions on free trade and commerce that may be required in the public interest.

Solution

Article 302 should be suitably amended so as to take away the powers of the union to interfere with intra-state trade.

A Macro View of Socio-Economic Development

Having briefly reviewed the constitutional position on major sectors of the economy, it would now be appropriate to have a brief look at the macro view of the pace of socio-economic change and development. The per annum GDP growth rate of Indian economy during 1950-80 has been 3.52 per cent, not a high growth rate by any parameters. However, the economy grew at 5.46 per cent during the 1980s. The growth rate has been slightly higher during 1990s. As regards basic indicators of human development, life expectancy has witnessed a substantial increase from 32 years in 1951 to 62.4 years in 1996; literacy rate too has gone up from 18.3 per cent in 1951 to 62 per cent 1997; Birth rate also witnessed a decline from 39.9 per thousand in 1951 to 26.4 per thousand in 1998; death rate also declined from 27.4 to 9.0 per thousand during the same period and infant mortality rate also decreased from 146 per thousand in 1951 to 72 in 1998. However, when compared to other developing countries, the situation is not very satisfactory. Besides there has been wide inter-state variations on these accounts. The incidence of poverty still varies from 35 to 40 per cent according to various estimates. In certain Indian states it is close to 50 per cent. This is much higher than China, Indonesia and Thailand who were at a similar stage of socio-economic development during 1950s.

It is clear from the forgoing discussion that we have not been able to attain the desired level of socio-economic development. We would have to look into our development strategy and centra-state relations in

the framework of Indian Constitution to find out the reasons. The following discussion is devoted to this aspect.

Union, States and Indian Constitution

The Indian Constitution has assigned to the States the responsibility for building up vital social and industrial infrastructure, which is an essential pre-requisite for rapid socio-economic development. These are responsible for rural development, education, medical and public health facilities, welfare of scheduled costs and scheduled tribes, etc. Further, they have to spent large sums on the development of roads, generation, transmission and distribution of power, etc. Which are so essential for industrial development (Annexure 1).

These responsibilities, particularly the creation of social infrastructure, involve large investments which do not yield immediate or direct returns. The maintenance cost of the social and economic infrastructure has also increased by leaps and bounds. Apart from above, the expenditure on non-developmental activities like maintenance of law and order, has also shown large increases, particularly in the wake of emergence of fissiparous tendencies and divisive forces. Over the years, the general administrative costs have risen steadily and today they form a large part of States' expenditure. The expenditure pattern of Punjab is given in Annexure 2. Inflation has made the situation worse. Faced with high cost of administration and inflation, the States complain of ever-widening gap between their own resources and needs (See Annexure 3). These gaps are, in a way, a measure of the large dependence of the States

on the Union for resources and indicates a weakness in the existing arrangements. The dependence of the States on the Centre is so high that about 70 per cent of their capital financing comes from the Centre. Infact, over the period of time, union has done load shedding to the states but not control and financial resources.

The heavy dependence of the States on the Union for financial resources has resulted in progressive erosion of the jurisdiction, authority and initiative of the States in their own constitutionally defined spheres. It has manifested in a gradual decline in the relative share of States in the total plan outlay. Growing outlay on the Union of State subjects, proliferation of centrally sponsored schemes, and Union's is tight control over planning in the States has further tightened Union's grip over the States.

Division of Revenue between the Union and States

Pattern of division of resources between the Union and the States under the constitution has been highly biased against the States right from the beginning vis-à-vis their responsibilities. As a result there has been a marked erosion of States' authority, responsibility and freedom of action with regard to the subjects originally assigned to them by the Constitution. Articles 268-272 have a direct bearing on the distribution of resources between the Union and the States.

The resource transfers from the Centre are partly by way of devolution in accordance with the recommendations of the Finance Commission (a constitutional body), partly through the Planning

Commission (a non-constitutional body) and partly as discretionary grants and loans through the Centrally sponsored schemes. The criterion of resource transfer to individual States has been Gadgil (now modified) Formula. The modified Gadgil formula consists of the following criteria and weights for allocation of overall amount to individual states :

(i) population : 60 per cent weightage

(ii) Per capita state domestic product below the national average : 20 per cent weightage

(iii) per capita tax efforts of state : 10 per cent weightage

(iv) special problems : 10 per cent weightage.

Out of the total central resource transfers to states, the pattern, on an average shows that 40 per cent resources were transferred on Finance Commission's recommendations and about another 40 per cent through Plan transfers. The remaining 20 per cent constituted other transfers, which have been by and large governed by the discretion of the Union Government.

During 1951-52, the share of the States in combined resources of the Union and the States has been around 51 per cent on the average. The share of States in actual total Plan outlay was 72.8 per cent in the First Five Year Plan. In the subsequent Plans it witnessed a declining trend and never exceeded 50 per cent. To add to it, on an average about two-third of the State Plan outlay is allocated by the system of ear-marking. This means that not only the States have insufficient share in the

combined resources but they also have a little choice and degree of freedom to utilise resources.

Again, for the first time, the 10th Finance Commission recommended transfer of 29 per cent of net tax (sharable taxes only) revenue to the states. The 11th Finance Commission recommended transfer of 33.5 per cent share to the states. Earlier the share was too small but what is sacro-sanct about 33.5 per cent. Why not 50 per cent or more as the State's responsibility towards the socio-economic development of the people is much larger than the Centre.

There is, thus, a five pronged need to effect amendments in the relevant Articles of Constitution in favour of the States. One, the divisible pool should be enlarged. this can be done in the following ways :

(i) All the tax receipts of the union be made sharable with the states.

(ii) Enlargement of the present sharable pool by including the proceeds from the following

(a) corporation tax;

(b) Surcharge on income tax

(c) All other Union taxes, e.g. Customs duty;

(d) All types of cess, etc. levied by the Union Government,

(e) Revenue from increase in administered prices of items like petroleum and steel, yields from schemes like special Bearer Bonds, etc.

Two, transfer of resources to the States through Finance Commission should be raised to at least 50 per cent as the responsibilities of states are much larger than 50 per cent. This should be reviewed for upward revision in every Finance Commission. CPI (M), in its memorandum to the Sarkaria Commission, demanded that 75 per cent of the total revenue raised by the Centre from all sources should be allocated to States by the Finance Commission.

Three, the modified Gadgil Formula should be designed in such a manner so that the advanced States are not at disadvantage. The government of Punjab wants its modification as under :

(i) population : 50 %

(ii) efforts for population control : 10%

(iii) literacy (inverse distance) : 20%

(iv) tax-effort and fiscal management : 10%

(v) special problems : 10% (Here the security sensitivity of the international border should be given 50 per cent weightage).

Four, the discretion in the transfer of resources through Planning Commission and through centrally sponsored schemes should be stopped and should be some objective formula to transfer those resources.

Five, Article 293, which almost protibs states from raising resources through public borrowing, should be suitably amended.

Sarkaria Commission made in all 247 recommendations mainly emphasising changes in the functional relations of Union and States. The

more important of these relate to the role of the Governor, reservation of State-Bills for consideration of the President; use of extraordinary powers under Articles 256, 257 and 365; establishment of Inter-Governmental Council under Article 263; limitations of centrally sponsored Schemes regarding subjects in the exclusive State subjects; restraint on excessive occupation by the Union of the Concurrent field, etc.

Though the Sarkaria Commission's recommendations are statutory they, in many areas, fall short of the concerns of the Punjab State. The State has strong views on Articles 256, 257 and 365 as they are not in tune with the dynamics of federalism. As such they need to be dispensed with. On the present Centre-state fiscal equation, it wants a fresh mechanism for restructuring its socio-economic development. In its view, the present fiscal equation leaves them in a pathetic state with no agility in planning for socio-economic development.

It may be mentioned here that neither the constitution nor the Sarkaria Commission visualised the recent changes in the national and global scenario. As such there is a rationale to discuss the response of the constitution to the changed scenario.

Paradigm shift : LPG and WTO Regime and Indian Constitution

Till 1991, Planning Commission has been the main instrument of socio-economic development in India representing the united will of the Union and State Governments. The recommendations of the Sarkaria Commission too are based on the assumption that planning would continue to play a major role in the socio-economic development of the

country. However, since July 1991, the Indian State has shifted from a planned development to the market driven development strategy. The main components of this new strategy are liberalisation, privatisation and globalisation (popularly known as LPG strategy). With the signing of GATT Agreements 1994 and inception of WTO with effect from 1 January 1995, the process of globalization has become faster. It full impact would, of course, be realised after 1 January 2005. The LPG and WTO regime would have far-reaching implications (both positive-negative) for the developing countries like India.

The builders of the Indian Constitution, however, did not visualise such a major paradigm shift in the national and global economies. The developmental ethos of Indian Constitution was mainly founded on the socio-economic planning with state as a major actor. Under the LPG strategy the role of the planning and that of the State would undergo a sea-change. The Indian state, in the changed scenario, has much greater responsibility to its people, particularly to those who would not be able to enter the orbit of market economy. Market does not bother about the downward percolation of the benefits of growth. Accordingly the regulatory role of the State would be much greater than in the earlier regime. Union Government alone would not be able to perform this role. It has to be performed by the State governments and the Panchayati Raj Institutions (PRIs). To perform that role effectively, they would require a higher amount of resources and power to legislate on a large number of items pertaining to socio-economic development of the people. Along with the transfer of resources, it requires winding up the Concurrent List

by shifting those items to the State list. From the stand point of socio-economic development of the states, the items at 41, 42, 43, 45, 52, 65, 82, 83 in the Union List must be given a fresh look in favour of the State list.

In fact the items 17 A, 20, 23, 25, 26, 33, 35, 36, 38, 39 in List III, have a direct bearing on the pace of socio-economic change and development in the States. Theoretically, both the Union and States can legislate on this list but Parliament's legislation supercedes the State legislation. For all practices purpose the list III is Union List. Besides there should be a clearly demarcated list pertaining to PRIs alongwith the devolution of corresponding amount of resources.

Indian Constitution and Punjab

Punjab has been a high growth and high productivity region of Indian economy. However, the State has been engulfed into a crisis situation in the recent period. Though crisis is manifested in various aspects of life yet it is more pronounced in economic life. By and large the crisis is of the nature of slow down in economic growth, fiscal breakdown and consequently non-fulfilment of aspirations of a very large section of the population. There is evidence of persons, living on or just above the poverty line, being pushed below the poverty line.

The crisis of Punjab economy is reflected through slow down in economic growth of the economy. The relative slow down in economic growth of the economy began in 1980s and assumed serious dimensions in 1990s. With withering out the positive effects of green revolution,

Punjab began to lose its fast dynamism of growth. In fact, green revolution has been concentrated around wheat and paddy whose yield has either stagnated or is increasing under diminishing return to factors.

Besides, green revolution could not help a corresponding development in the industrial sector mainly because of Union Government's constitutional monopoly over the industrial development and the Industrial Licensing Policy. For the development of backward areas, industrial licensing policy has been used purposively in their favour, in addition to subsidies and tax advantages. Punjab has suffered on this account because it was agriculturally developed state, so it was not declared a backward state.

As regards distribution of gross block capital and manpower in central public sector projects, Punjab's share in total gross block and employment was just 1.2 per cent and 1.1. per cent, respectively in the year 1984-85. Compared to it the backward states like Bihar and Madhya Pradesh accounted for 12.37 and 11.40 per cent in gross block and 20.86 and 13.07 per cent in employment. Punjab's share in total outlay of central industrial and mineral projects (excluding unallocated) during 1985-90 was just 1.2 per cent whereas the corresponding percentage shares for Andhra Pradesh, Madhya Pradesh, and Orissa, Bihar and West Bengal were 23.8, 15.2, 14.9, 8.8 and 8.5 respectively. Similarly, Punjab's share in the direct assistance sanctioned by Public Sector Financial Institutions (IDBI, IFCI and ICICI in the year 1982-83) was just 3.2 per cent compared to 23.8, 14.3 and 6.8 per cent of Maharashtra, Gujarat and Andhra Pradesh respectively. Again in the case of Punjab,

devolution of finances from the Centre cover only about 11.7 per cent of its revenue expenditure as against 24 per cent for all the States.

More so the Union Government's bias to develop Punjab as supplier of foodgrains to the rest of India did not allow Punjab economy's intra-sectoral and inter-sectoral diversification. As such the labour force remained concentrated in agricultural and allied activities. It was largely because of the enormous concentration of constitutional power in the hands of Union Government that the States could not dare to defy the Centre on socio-economic pace and development. Punjab agriculture absorbed 55.89 per cent of labour force in 1961 and 55.26 per cent in 1991. Clearly, there is hardly any shift of labour force from agriculture to other sectors. Compared to it the share of agricultural sector in Punjab's net state domestic product came down from 48.62 per cent in 1961 to 34.69 per cent in 1991. This has been one of the major limitation of Punjab model of growth and a main reason for ever-widening rural-urban gap.

In fact the inclusion of labour welfare, employment, social security and social welfare in the Concurrent List led to the adoption of uniform policies for the whole of India. Such a uniformity does not suit to the interests and aspirations of the people of different States with varying degrees of socio-economic development and aspirations. For example, the problem of Punjab is not to generate just any type of employment for its 14-15 lakhs educated unemployed youth. Its problem is to generate quality employment unlike the problem of BIMARU States. Thus, there is an urgent need to formulate region specific policies suitable to the

aspirations of the people of the region. This lends support to its demand for greater politico-economic autonomy.

Punjab agriculture, now faces two-pronged challenges. One from within the country and other from global market. Within the country, the demand for Punjab's wheat and rice is declining. Globally Punjab agriculture is facing tough competition in the face of ever declining prices of primary commodities. With the ouslanght of WTO regime – lower tariff rates and abolition of quantitative restrictions (QRs) – Punjab agriculture and industry is further in for crisis. Recently, the union Government abolished QRs on 714 items and QRs on another 715 items would be abolished by 31 March 2001. Out of these 1429 items, 825 relate to agriculture and dairy products.

In Punjab, dairying and live stock alone contribute about 40 per cent income to the primary sector and nearly 18 per cent to the NSDP. It provides regular income and employment to a sizeable proportion of workforce engaged in the primary sector. Clearly, Punjab economy would suffer a serious setback if agriculture and allied activities are adversely affected.

Now the point here is that even within the WTO regime there are several way outs, relaxations and safety nets. But for that Punjab would have to look towards Union Government. To mention a few cases : India can impose tariff duty to the tune of 100 per cent on primary produce, 150 per cent on processed goods and 300 per cent on oil seed imports. Punjab on its own, for that matter no state, cannot impose these duties. It

would have to request the Union Government. Besides, there are several other measures which can be taken, even within the framework of WTO, to safeguard the interest of Indian economy. But those measures are to be taken by the Parliament and the Union Government.

The Union Government in its own wisdom, ignoring the interests of Punjab, may or may not raise the tariff rate to the desired level satisfying Punjab's pressing needs and aspirations. This is because of the fact that trade and commerce with the outside world are the subject matter in the Union List. Thus in order to take care of the States' interests and aspirations, the States must have an effective say in external trade and commerce. But the problem again boils down to the fact that the Union Government has a virtual concentration of politico-economic powers in its hand and States are having very limited degree of freedom.

Summing Up

As per the Indian Constitution, India is a Sovereign Nation comprising a 'Union of States'. No where in the Constitution it is referred to as 'Federation of States'. The spirit of the Indian Constitution is unitary rather than federal. The Union Government wield enormous amount of politico-economic powers under the Constitution that the States have practically very limited degree of freedom. The Parliament, in the public interest, can legislate on any subject in the State and Concurrent lists apart from the Union List. States are heavily dependent on the Union for financial resources and economic-decision making so essential for the socio-economic development of the people. The relatively developed

States virtually have no incentives as far as the devolution of funds from the Centre are concerned.

There is thus a need to undertake a thorough review of the Indian Constitution keeping in view the aspirations of the States and the changed politico-economic scenario at the national and global level. Since the nation is busy in reviewing its Constitution it needs to be reviewed in the true federal spirit rather than a mere 'Union of States'. There is a need to empower the States, through suitable Constitutional amendments, in decision making pertaining to socio-economic development of their people as per their aspirations. This needs objective devolution of resources from the Centre to the States.

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ANNEXURE I

ILLUSTRATIVE LIST OF DEVELOPMENTAL SUBJECTS (OTHER THAN FINANCIAL SUBJECTS) INCLUDED IN UNION LIST, STATE LIST AND CONCURRENT LIST AS PER SEVENTH SCHEDULE OF THE CONSTITUTION.

(A) Union List

Entry No.	Subject
6	Atomic energy and mineral resources necessary for its production.
22	Railways.
23	Highways declared by or under law made by Parliament to be national highways.
24	Shipping and navigation on inland waterways, declared by Parliament by law to be national waterways, as regards mechanically propelled vessels the rule of the road on such waterways.
25	Maritime shipping and navigation, including shipping and navigation on tidal waters provision of education and training for the mercantile marine and regulation of such education and training provided by States and other agencies.
26	Lighthouses, including lightships, becons and other provision for the safety of shipping and aircraft.
27	Ports declared by or under law made by Parliament or existing law to be major ports, including their delimitation, and the constitution and powers of port authorities therein.
28	Port quarantine, including hospitals connected therewith seamen's and marine hospitals.

29 Airways aircraft and air navigation provision of aerodromes: regulation and organisation of air traffic and of aerodromes; provision for aeronautical education and training and regulation of such education and training provided by States and other agencies.

30 Carriage of passengers and goods by railways, sea or air, or by national waterways in mechanically propelled vessels.

31 Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication.

41 Trade and commerce with foreign countries; Import and export across customs frontiers: definition of customs frontiers.

42 Inter-State trade and commerce.

52 Industries, the control of which by the Union is declared by parliament by law to be expedient in the public interest.

53 Regulation and development of oilfields and minerals oil resources; petroleum land petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable.

54 Regulation of mines and mineral development to the extent which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

56 Regulation and development of inter-State rivers and river velleys to the extent to which such regularion and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

57 Fishing and fisheries beyond territorial waters.

65 Union agencies and institutions for –

(a) professional, vocational or technical training including the training of police officers; or

(b) the promotion of special studies or research; or

(c) scientific or technical assistance in the investigation or detection of crime.

66 Coordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

67 Survey of India, the geological, botanical, zological and anthropological surveys of India, meterological organisations.

(B) State List

5 Local government, that is to say, the constitution and powers of municipal corporations, improvement and district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

6 Public and sanitation; hospitals and dispensaries.

9 Relief of the disabled and unemployable.

13 Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in list 1; municipal tramways; ropeways; inland water ways and traffic thereon subject to the provisions of List II and List III with regard to such waterways; vehicles other than mechanically propelled vehicles.

14 Agriculture, including agricultural education and research, protection against pests and prevention of plant and seases.

15 Preservation, protection and improvement of stock and prevention of animal diseases; veterinary training and practice.

17 Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List 1.

18 Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents;

transfer and alienation of agricultural land; land improvement and agricultural loans, colonization.

21 Fisheries.

23 Regulation of mines and mineral development subject to the provision of List I with respect to regulation and development under the control of the Union.

24 Industries subject to the provisions of entries 7 and 52 of List I.

25 Gas and gas-works.

26 Trade and commerce within the State subjects to the provisions of entry 33 of List III.

27 Production, supply and distribution of goods subject to the provisions of entry 33 of List III.

32 Co-operative societies.

35 Works, lands and buildings vested in or in the possession of the State.

(C) Concurrent List

17A Forests

20 Economic and social planning.

23 Social security and social insurance; employment and unemployment.

25 Education, including technical education, medical education and universities, subject to the provisions of entries 63,64,65 and 66 of List I; vocational and technical training of labour.

27 Relief and rehabilitation of persons displaced from their original place of residence by reasons of the setting up of the Dominions of India and Pakistan.

31 Ports other than those declared by or under law made by Parliament or existing law to be major ports.

32 Shopping navigation and inland waterways as regard mechanically propelled vessels, and the rule of the road on such waterways, and the carriage of passengers and goods on inland waterways subject to the provisions of List I with regard to national waterways.

33 Trade and commerce in, and the production, supply and distribution of –

(a) The products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest, and imported goods of the same kind as such products;

(b) food suffs, including edible oil seeds and oils;

(c) cattle fodder, including oilcakes and other concentrates;

(d) raw cotton, whether ginned or unginned and cotton seed and

(e) raw jute.

36 Factories.

37 Boilers.

38 Electricity.

Expenditure of the Punjab Government

(Rs. Crores)

Year	Development Expenditure	Non-development Expenditure	Grant-in-aid	Total
1978-79	283.61	101.90	1.08	386.57
	(73.36)	(26.37)	(0.27)	(100.00)
1979-80	296.44	113.91	1.51	411.86
	(71.98)	(27.66)	(0.36)	(100.00)
1980-81	395.25	153.20	1.08	549.33
	(71.92)	(27.88)	(0.20)	(100.00)
1981-82	432.02	186.26	1.10	619.98
	(69.78)	(30.04)	(0.18)	(100.00)
1982-83	466.41	214.14	3.01	683.56
	(68.23)	(33.63)	(0.41)	(100.00)
1983-84	583.05	235.14	1.67	819.86
	(71.12)	(28.68)	(0.20)	(100.00)
1984-85	615.17	319.45	6.72	941.34
	(65.35)	(33.94)	(1.50)	(100.00)
1985-86	773.19	372.24	17.47	1162.90
	(66.49)	(32.01)	(1.50)	(100.00)
1986-87	773.45	418.33	10.31	1202.09
	(64.34)	(34.80)	(0.86)	(100.00)
1987-88	1190.57	432.27	10.70	1633.54
	(72.88)	(26.46)	(0.66)	(100.00)
1988-89	1302.21	546.19	19.08	1867.48
	(69.73)	(29.25)	(1.02)	(100.00)
1989-90	1313.31	685.31	22.44	2121.02
	(64.98)	(33.91)	(1.11)	(100.00)
1990-91	1635.98	855.84	28.28	2519.91
	(64.92)	(33.96)	(1.12)	(100.00)
1991-92	3183.44	981.94	31.33	4196.71
	(75.85)	(23.40)	(0.75)	(100.00)
1992-93	1936.72	1452.66	33.14	3422.52
	(56.59)	(42.44)	(0.97)	(100.00)
1993-94	2131.77	1875.35	57.12	4138.98
	(51.49)	(46.38)	(1.41)	(100.00)
1994-95	2192.70	3802.33	47.73	4336.91
	(36.29)	(62.92)	(0.79)	(100.00)
1995-96	2552.93	3017.67	64.39	5634.99
	(45.31)	(53.55)	(1.14)	(100.00)
1996-97	3947.16	2911.90	66.61	6925.67
	(56.99)	(42.05)	(0.96)	(100.00)
1997-98(R)	4463.32	3661.46	70.87	8195.65
	(54.46)	(44.68)	(0.86)	(100.00)
1998-99(B)	4441.70	5042.47	71.16	9555.33
	(46.49)	(52.77)	(0.74)	(100.00)

R=Revised, B=Budget.

Note: Figures in brackets are percentages.

Variables Reflecting Upon the Health of the Punjab Finances

Year	As % of GSDP				
	Capital Exp	Revenue Balance	Fiscal Balance	Revenue Deficit	Interest net of write-off
1985-86	6.03	.08	-5.95	-.08	-
1990-91	3.70	-2.91	-6.61	2.91	-
1994-95	2.96	-2.11	-5.07	2.11	3.53
1995-96	2.37	-1.17	-3.54	1.17	2.29
1996-97	2.34	-2.47	-4.81	2.47	3.52

Note that the fiscal deficit is larger than the interest net of write-offs. That means more money is being borrowed than is necessary to pay the interest on debt. As a result, the debt and the deficit budget will continue expanding.

Structure of Revenue Receipts in Punjab

(Rs. in crore)

	1980-81	1985-86	1989-90	1992-93	1996-97	1999-2000*
(A) Central Transfers	126.25 (22.24)	306.58 (26.20)	329.31 (18.29)	699.42 (25.10)	898.15 (16.13)	1498.85 (17.74)
(i) Share of Central taxes & Duties	82.20 (14.48)	114.01 (9.74)	207.64 (11.53)	349.01 (12.53)	523.35 (9.49)	671.11 (7.94)
(ii) Central Grants	44.05 (7.76)	192.57 (16.46)	121.67 (6.76)	350.41 (12.57)	369.80 (6.64)	827.74 (9.80)
(B) State own Revenues	441.40 (77.76)	863.68 (73.80)	1470.66 (81.71)	2087.50 (74.90)	4679.45 (84.03)	6386.93 (75.58)
(i) Own Tax Revenues	348.85 (61.46)	670.23 (57.27)	1227.51 (68.20)	1758.75 (63.10)	2734.65 (49.11)	4166.04 (49.30)
(ii) Own Non-tax Revenues	92.55 (16.30)	193.45 (16.53)	243.15 (13.51)	328.75 (11.80)	1944.80 (34.92.)	2220.89 (26.28)
(C) Total Receipts	567.66 (100)	1170.24 (100)	1799.97 (100)	2786.93 (100)	5568.61 (100)	8450.78 (100)

(2)

Keynote address delivered by
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Constitution and the Countries in the modern times, are indivisible. Both can be termed as legal entities, country represents the people and the Constitution the `basic law' to be applied on the people. The tremors are felt if any one country or Constitution suffers intrusions more-so from the vested interests. It would not be an overstatement if I say that when the Constitution becomes unstable, Country also does not remain stable. But the Constitution which is the law of the land should be neither too static nor too dynamic, it must fulfill the requirements of the people. Being based on accommodation and adjustment it should change with social changes and necessities of the society. This is how there are always in-built provisions for amending the Constitution. India is no exception. The Constitution does not specify any provision for recasting the Constitution but specifies amending procedure. Even Dr. B.R. Ambedkar who is considered to be the architect of the Constitution had said that the framers of the present Constitution are not the last word on the Constitution. Jawahar Lal Nehru agreed to over-look the objective resolution three of the Constitution about the division of subjects when the circumstances had changed with the announcements of partition of the country. Indira Gandhi, however, made drastic changes in the Constitution through amendments and did not spare to introduce `secular & socialist' in its Preamble. She initiated a debate through Vasant Sathe on the nature of the political system and the same debate was taken over by BJP in the later half of the nineties of the twentieth Century. The entire Constitution was disturbed in 1975 with the imposition of emergency without getting the approval

of the Cabinet. Morarji Desai, the first non-Congress Prime Minister did not lag behind while passing 44th Amendment. Rajiv Gandhi wanted the Constitution and the political system to be reviewed after every five years or so.

With the announcement of the Constitutional Review and the formation of a Committee under Venktachalli, a heated debate started whether the review is called for or not. Some called it as an insult to Dr. Ambedkar, while others talked about the hidden agenda of bias towards `Hindutva' and imposition of `birth based superiority'. Moreover, they asserted that the review should be made by the Parliamentary committee and not by a special review committee. The basic structure of the Constitution cannot be altered even by Parliament as has been held by Supreme Court in many cases like Golaknath (1967), Keshav Anand Bharti (1973), Indira Gandhi (1975), Minerwa Mills and others. One would also agree that amendments in the Constitution is not a rare phenomenon. These amendments have been carried out both in developed and developing societies and some of them like 73rd amendment has strengthened Democracy. But passing more than eighty amendments within 50 years is more or less overhauling the Constitution.

But all these objections are baseless in the sense that Dr. Ambedkar himself had said that he and other all members of the Constituent Assembly are not the last word on the Constitution. The terms of the reference of the Constitutional Review are very clear and the objection about `hidden' and `Hindutva' agenda has no basis. There is no proposal to change the basic structure of the Constitution and even the parliamentary political system as has been envisaged in the terms of reference to the Constitutional Review Committee. It would be most appropriate to mention that a special session of parliament was called in 1997 to review the failures and achievements of the Constitutional and of the system and their working, but could not achieve anything. Such efforts had been made at least four times earlier also. In fact this review committee is to assist the Parliament in coming to some logical and urgent conclusions. There must be power with

this review committee is to assist the Parliament in coming to some logical and urgent conclusions. There must be power with accountability, duties with Rights which the present Constitutional framework does not ensure. The very fact that NDA enjoys majority in the Lok Sabha and not in Rajya Sabha would strengthen consensus politics on various suggestions to be given by Constitutional Review Committee.

Why Review

In fact fifty years' of experience of the working of the Indian Constitution is an enough ground to warrant its comprehensive review. We have already over-hauled the Constitution by making more than eighty three amendments and are in the process of making a few more within a short period. However, there are some compulsive reasons also as to why the review should be undertaken.

Firstly, the framers of the Constitution had erroneously assumed that Indians had enough experience of operating the parliamentary system during the British rule little did they realize that only 3% of the population under the Act of 1919 and 14% under the Act of 1935 enjoyed the right to vote and hold effective offices. Illiteracy and ignorance were most rampant amongst the people. The whole parliamentary era including dyarchy and provincial autonomy lasted for not more than nine years in the total over one hundred and seventy seven years of British rule starting from 1773. Naturally, the fall out was very clear. We failed to evolve healthy parliamentary institutions like two-party system, non-party speakership and responsible opposition, With the passing away of the first elite generation of political leadership, decay in the system crept in and snowballed into the present dismal condition in which the whole politics has been criminalized, and leadership has become a game of power and perf., the legislatures at times become fish markets.

Besides, the Constitution was drafted in a very hurried way after the declaration of partition by the British. The objective resolution passed earlier about the distribution of subjects between the Centre and the States was based on traditional federation while the entire constitution is now based on the principle of `unity and integrity'. The Constitution abounds in many temporary provisions dispersed through most of its parts as its framers in an adhoc manner tackled the problems with which they were immediately faced. Division of states into A,B,C categories, provision of citizenship for displaced persons, insertion of Directive Principles of State policy in lieu of Fundamental Rights, special rights and facilities for religious minorities. Special provision for scheduled castes and tribes (including reservations for Scheduled Castes and tribes) for specific period, temporary language policy, privileges of rulers of erstwhile states etc. besides Article 370 are some of the glaring temporary provisions dotting the entire Constitution, Moreover, there are provisions in part XXI which is explicitly devoted to temporary and transitional provisions. This adhocism makes the Constitution essentially provisional
and so should have been reviewed much earlier than today.

The very selection of the British made Act of 1935 as model smacks of expediency and failure to seek indigenous roots in the Indian society.

Lack of adequate understanding of the British Parliamentary against our traditional culture system and rightly or wrongly, association in the Indian mind, of western culture with materialism and individualism made succeeding generations of Indian politicians more and more self seekers and unscrupulous. This has resulted in remorseless misuse and provision of even otherwise salubrious Articles.

Besides this the states are craving for autonomy. In this context, the Centre had taken a step by constituting a Commission in 1983, popularly known as `Sarkaria Commission'. It had given its report in two volumes. A few irritants

between the centre and the states were taken care of by the Commission while the others were left unsettled and undiscussed. The entire report is gathering dust. It is important that all the issues which have been left unattended to also be taken up. This has necessitated the involvement of Justice Sarkaria in the Commission.

Wider discretion in the hands of a few executives has also led to the subversion of the Constitution and it is on this assertion that the eminent lawyers, Nani Palkiwala wrote a book entitled `Our Constitution Defaced & Defied' to condemn some of the reckless perverted provisions and interpretation of the Constitution. The most misused Article is 356 regarding imposition of President's Rule in a State. Which Dr. Ambedkar had thought would remain mostly a `dead letter'. It has been used as a tool of power politics in the hands of the ruling party upto 1997. Another most misused Article is 31 B which excludes Acts and Regulations specified in the Ninth Schedule from the purview of Fundamental Rights. This has led to putting all constitutionally doubtful Acts in the said Schedule. The number has risen to whopping 284 at present and there is no insurance against its surpassing the number of Articles in the Constitution itself. Like Maruti's tail it is ever increasing ! So many exceptions to the rule make the exceptions the rule and the rule the exception!

The third most misused Provision is about Constitutional Amendment under Article 368. The world record of eighty three amendments in a span of 50 years speaks for itself.

The other misused and perverted Articles are : Article 25 [2] (B) and Article 30 (Special protection of minority interests), Articles 102 [2] and 191 [2] with Schedule X (Anti-defection provisions). Article 105 [2] (Immunity from judicial proceedings for actions by members in the Parliament House), Article 124 and 217 (Appointment of judges), Articles 129 and 215 (Powers regarding

contempt of court), Article 198 [5] (Statutory limit of 14 days for sending Money Bill to the Legislative Council), Article 352 (Original provision about declaration of emergency), etc. All these point to the dire need of review.

And lastly, it is pertinent to note that in spite of so many amendments already made, there still remains in the Constitution a number of unresolved critical areas that need immediate attention. They pertain to the problem of stability of government without losing accountability. The areas thus demarcated are:

1. Strengthening of the Institutes of Political Democracy.
2. Electoral Reforms : Standard of Political Life.
3. Pace of Socio-Economic change and Development under the Constitution.
4. Promoting literacy ; generating employment; ensuring social security; alleviation of poverty.
5. Union State Relations.
6. Decentralisation and Devolution; Empowerment and Strengthening of Panchayti Raj.
7. Enlargement of Fundamental Rights.
8. Effectiveness of Fundamental Duties.
9. Effectiveness of Directive Principles and Achievement of Preambular objectives of the Constitution.
10. Legal control of fiscal and monetary Policies; Public Audit Mechanisms, Standards in Public Life.

Objections

Clearly the case for review is very strong however, some objections have been raised, which need due consideration.

No less than the President of India, Shri K.R. Narayanan, recently on 27.1.2000 expressed his doubt about the propriety of reviewing the Constitution. He observed "We have to consider whether it is the Constitution that has failed us or whether it is we who have failed the constitution", but when he made a budgetary speech he said otherwise. Similar views were expressed by Dr. B.R. Ambedkar and Dr. Rajendra Prasad earlier also. I think it is important to distinguish between our failings and those of the Constitution.

It must be noted that the Review Commission consists of eminent technicians and not a single person is from the political sector which it should have. Dr. Subash C. Kashyap is an expert on Constitutional philosophy and not on the political system. There is one lady member and most of the members are from the backward and weaker sections of society. It is a big lacuna that other communities and functionaries has not been included. Let us see if it is filled by the wisdom of the members of the Parliament who run the entire show.

Another defect with this Commission is that it consists of nine members of minority and weaker sections and only two of the majority community. Thus, it looks like a minority commission.

It is not denied that there are some good features of the Constitution that have persisted through thick and thin. Democracy and secularism are the features in point. But they have survived because they are ingrained in the very nature of the Indian people, their freedom of thought, tolerance of

dissent, basically non-violent temperament and equal respect for all religions. But in many other areas, as pointed out earlier, the matching has not taken place which has affected our democracy and secularism also and led to their deterioration to some extent. So as former President, Shri R. Venkatraman, says, "The whole Western idea of governance has distorted our thinking." (Indian Express, 16.1.2000). However, review is not undertaken just for fault-finding. It tries to identify both good and bad features and to further reinforce the former and rectify the latter.

Some political leaders, particularly those belonging to Backward Classes, stubbornly oppose review of the Constitution as they do not want this gift of Dr. Ambedkar to the nation to be tinkered with (Probably, it is because of this that the Commission has most of its members from backward and weaker classes). This stand is most surprising as, on the one hand Dr. Ambedkar himself had said that there was no seal of finality and infallibility upon this Constitution and the aforesaid leaders, on the other hand, did not even raise their eyebrows when the Constitution was being maimed and mutilated through reckless amendments in the past. As many as more than eighty three amendments, some of them of highly objectionable nature, have been so far effected in the Constitution. The original Constitution of 22 parts, 395 Articles and 8 Schedules has over the period grown into 25 parts, 443 Articles (through interprolation) and 12 Schedules ! These voluminous changes coupled with the perveted operation of most of the provisions make the Constitution almost entirely different from that envisaged by Dr. Ambedkar.

Dr. Amedkar wanted the political democracy of the Constitution to usher in social and economic democracy. He wanted the Scheduled Castes and Scheduled Tribes to catch up with other communities fully and speedily in the shortest possible period so that the props of reservation could be dispensed within ten or twenty years. He was also very keen to foster national integration. So he would have been extremely worried to see all these dreams

of his belied and would have himself welcomed the review of the Constitution to explore ways and means to fulfilling his aspirations. The best way to pay tribute to Dr. Ambedkar, therefore, would be for the aforesaid leaders to join in the review endeavour and suggest constitutional reforms to realize the above objectives of Dr. Ambedkar.

Putting party interest above national interest has been the bane of Indian politics. Certain party spokesmen oppose review lest it hurts the basic structure of the Constitution though they themselves had tinkered with it in the past. Others oppose any change in the Constitution though usually they themselves advocate throwing away the constitution into the waste-paper basket as so much capitalistic garbage! They all accuse the ruling party of having some "hidden agenda" when they themselves appear to have one, viz., their party interest.

It is understandable that all parties, NDA and especially the BJP, would have some party interest in the policies they formulate and the work they undertake. But care should be taken that it does not harm national interest in any way and that they come together for a national cause. Review of the Constitution after fifty years of mixed experience is one such national cause. Parties should shed their particularist interests and come together to build a grand consensus on the subject.

It must be said to the credit of the BJP that it has climbed down considerably from its own agenda to meet the demands of the opposition parties and has announced categorically that the proposed review of the Constitution would take place within the parameters of parliamentary democracy and the basic structure of the Constitution. In fact, theoretically, this is a wrong move. Review with constraints is a contradiction in terms and every feature of the Constitution should be allowed to stand or fall on merit after scrutiny.

The Constitution does not permit its recasting and hence review is necessary. Even in matters of important legislation, views of experts are first ascertained before political parties formulate their views. This is as it should be. In this case, also politically parties, including the opposition ones would get full opportunity to discuss the experts' findings both inside and outside the Parliament. In any case, no change in the Constitution is possible unless the opposition parties, particularly the main opposition party, agree to it as the BJP-led government does not command two-thirds majority in the Parliament to pass any amendment. The opposition parties, therefore, need not entertain any apprehension on this count.

Some Proposals

Review of the constitution is not the exclusive function of the Review Commission. It implies national debate on the subject also. It is in this spirit that the following changes in the Constitution are proposed. Care is taken to keep them within the parameters of the parliamentary system and the basic structure of the Constitution.

1. **Preamble :**

The Preamble is rightly called 'poetry in prose'. But it lacks mention of the most fundamental objective of the Constitution, namely, `Sustenance of society and happiness of all people'. This should be suitably added in the Preamble. The Preamble also loses balance by mentioning rights only without any reference to corresponding duties. So, between the words to promote among them all and `Fraternity', the words `Adherence to duties towards the State and the society and' may be added. The words `socialist secular' may also be deleted as they are redundant.

2. Article 25(2) and 30:

Our secularism is based on equal respect for all religions. Article 25 explicitly guarantees and equal entitlement to religious freedom for all persons. It recognizes Sikhs Budhas and Jains as religious communities Articles 14 and 15 also prohibit discrimination on the ground of religion. Provision of Articles 25 (2)(b) and 30 are violative of the Fundamental Rights enshrined in Articles 14,15 and 25(1) as they are clearly discriminatory.

It may be said that these provisions were introduced in the Constitution to ally any possible fears of the minority communities of being swamped by the majority. Now after 50 years of their existence, these discriminatory provisions should go. Freedom granted to all religious communities to manage their religious affairs under Article 26 should be enough for the religious minorities also.

On the other hand, the continuance of these provisions is proving counter-productive as they tend to create isolationist tendencies in the minorities and resentment in the majority community which sometimes results in bitterness and bad blood between the two. As a result tensions between them are growing and, consequently, the minority communities, particularly the Muslim, suffer from numerous deprivations in non-religious areas. In the interest of all communities, majority and minority, and in the interest of healthy national integration, the aforesaid discriminatory provisions must now go.

3. Article 32:

This pertains to the Right to Constitutional Remedies for enforcement of Fundamental Rights. A clause should be added in this Article to provide that `The level of performance of corresponding duty or duties by the claimant of rights or right shall be considered by the court while deciding his case'.

In view of the growing lawlessness in the country, such a provision seems to be imperative.

4. Articles 36 to 50:

These are Directive Principles of State Policy. A provision should be added to them requiring Central and State Governments to submit to their Legislatures annual reports regarding steps taken by them during the reporting period with a view to implementing the Principles. This will save the Principles from being neglected and make Government accountable for them.

5. Articles 58,66,75 and 124:

These Articles need to be amended to provide them proper role.

6. Articles 75(3) and 164(2):

These articles provide for collective responsibility of Central and State Ministries to their respective Legislatures (Lower Houses). This is a cardinal principle of parliamentary democracy. It ensures accountability of Government and the framers of the Constitution preferred it to stability of government. Experience of the past decade has, however, shown that stability is as important as accountability and so the constitution should be suitably amended to ensure both of them function within the framework of the parliamentary system.

This can be done by amending the aforesaid Articles to provide that in case of difference of opinion between the Government and the Legislature, the opinion of the latter will prevail and the Government would act accordingly without being required to resign. Such a provision exists in the 'Constitution of

Switzerland and it combines the virtues of both accountability and stability. This provision will have the following additional advantages:

a) The no-confidence moves are sheer number games often manipulated, and no-holds barred struggles for power, making a mockery of the principle of accountability. The aforesaid amendment will put an end to these unhealthy practices.

b) It will also put an end to the most disgraceful phenomenon of defection, the whole obnoxious `Ayaram-Gayaram' business. This would also make the anti-defection provisions of the constitution, that is, Articles 102(2) and 191(2) and Schedule X redundant.

c) It will also liberate the party-member from the authoritarian party whip and enable him to vote according to his conscience without losing his party affiliation.

7. Articles 81(a), 170 and 326:

These Articles pertain to the present election system. It is now acknowledged on all hands that our election system suffers from chronic ailments emanating from money-power, muscle-power, mafia-power, media-power, ministerial power, casteism and religious bigotry. It is the mother of all ills our body politic suffers from. A thorough overhaul is called for to reform the system.

In the vast and complex jungle of Indian elections, the unscrupulous elements can strike at will at any place, any time and in any manner of their choice. It becomes impossible for the State machinery to cope with the menace and checkmate it.

The only solution lies in cutting down the vast size to a manageable dimension. It is therefore, suggested that we should have direct elections based on adult franchise only at the grassroot level, i.e. village panchayats and municipalities. Masses are generally interested in local matters and they are in the know of local problems and local leaders. However, as the expanse of land and the height of issues increase, their competence to judge people and sort out issues progressively diminishes. There is, therefore, no point in having direct elections to the higher bodies. In other words, local bodies should elect zilla parishad, zilla parishads should elect provincial legislature and provincial legislature and provincial legislatures should elect parliament. This system will cut down the total size of elections and make them manageable. State machinery would prove more than adequate to tackle problems if they arise.

In addition to the above, qualifications for membership of legislature should be suitably amended to disqualify (a) convicted criminals, (b) chargesheeted offenders (excluding those for civil disobedience), (c) rule-breakers e.g. defaulters of income tax, bank loans, telephone bills, electricity bills, rent payment, vacation of public property when due etc. from contesting elections. Similarly, those who attract any of the aforesaid disqualifications subsequent to their election, should forthwith cease to be members; for, law-makers should not be law-breakers.

But all the se provision will still leave the problems of electoral appeal to caste and religion and vote-bank politics untackled. In order to tackle them, it is suggested that we should have vocational or functional constituencies instead of territorial ones.

People of all castes and religions are largely spread over different vocations and so, in vocational constituencies, the focus would shift from caste and religion to vocation. And as vocation represents the genuine interest of

people, the Elected House would be truly representative of people's genuine interests. And automatically the representation would also be proportional to the number of followers of various professions. Here interest does not mean only economic interest.

Similarly, in place of the present first-past-the-post system, absolute majority of votes caste should be necessary to win an election. If necessary, a run-off should be held.

This would thus be a viable and satisfactory electoral reform. Details, however, will have to be worked out if it is accepted in principle.

8. Articles 105 and 194:

These Articles pertain to the powers, privileges and immunities of Members of Parliament and State Legislatures. They are often misused by the members and their conduct in the House is becoming more and more unworthy of them. To curb this degeneration, the following section may be added to these Articles.

Section (5)

Notwithstanding anything in the foregoing sections of this Articles, the Parliament/State Legislature shall formulate a code conduct in the House for its members and appoint, a committee of experienced parliamentarians – past and/or present – to decide cases of breach of the code of conduct. The decision of the committee shall be final, subject only to review by the house concerned by two-thirds of its total membership.

9. Articles 356:

This Articles regarding imposition of President's Rule in a State is by far the most abused Article of the Constitution. The framers of the Constitution provided this Article as a safety valve to be used in the rarest of rare situations when other provisions of the Constitution prove inadequate. While need of such a provision is necessary, the Article needs to be altered as follows to prevent its misuse:

a) The Article provides much wider scope for imposition of President's Rule than what is expressed in the title of the Article viz. `failure of constitutional machinery'. This inconsistency should be removed by bringing the wording of grounds in Section (1) of the Article in line with that of the title. This would ensure that President's Rule under this Article would not be imposed except for failure of the constitutional machinery.

b) A proviso should be added at the end of the Article that before taking action under this Article, the union should explore remedies under Articles 249, 256 and 355.

c) A show-cause notice should be given to the State concerned before action under the Article is taken.

d) Proclamation of President's Rule should state the ground(s) on which the proclamation is issued. If such a statement of ground(s) is not felt to be advisable, the grounds should be approved by the Judiciary.

e) It should be obligatory on the part of the Judiciary to dispose of cases pertaining to the proclamation most expeditiously.

f) There should be a prescribed uniform code of conduct for the Governor while handling situations of constitutional import.

The states are claiming autonomy. The very word `autonomy' create problems. In fact the states want more powers. Devolution of powers is very important but it should not lead to USSR type of devolution. The irritants between the Centre and the States in matters of administration should be removed. Where the states have resources and man power for development, the Centre should not stand in its ways. They should also see that it should also give adequate powers and resources and independence to Panchayats which they are not giving in many of the states. Article 370 should be scrapped.

Some suggestions

In addition to Constitutional reforms, there would be need to revise certain policies in order to improve implementation of constitutional provisions. A few suggestions are made here with this view.

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Some Suggestions

In addition to Constitutional reforms, there would be need to revise certain policies in order to improve implementation of constitutional provisions. A few suggestions are made here with this view.

1. Centre-State relations:

India is a land of diversities. But there is a string of basic unity running through them. Like all creation, unity in diversity is the cardinal principle of the Indian way of life. It is unfortunate that some people, in the name of pluralism, emphasize diversities only. While delineating Centre-State relations, care should be taken to create a neat balance between diversity and unity. It would be good if both the center and the States, are made strong in a way that adds to the strength of each other. This can be achieved by taking an integrated view of their relationship.

There should be autonomy at each level : Panchayat, zilla parishad, pradesh (State) and union. This means grant of adequate planning, administrative and financial powers to each level. But this should not mean exclusivity. Authorities at the higher level should perform the duty to guide, warn and coordinate with the lower level though final decision must rest with the latter. Similarly, the lower level must be able to take over functions in addition to its own as is done in France, provided

a) it raises resources on its own and
b) obtains no-objection clearance from the higher level(s) to which the functions belong. There should be a uniform patter of autonomy for all States including J & K.

2. Reservation:

This is a very sensitive problem and needs to be tackled with proper understanding of the view of both proponents and opponents of reservation. It should, however, be noted that reservations are means to an end and not an end in themselves. It is therefore, a matter for worry that they tend to be viewed as ends in themselves. Equally worrying that they tend to be viewed as ends in themselves. Equally worrying is the inherent tendency of reservations to develop vested interest and divisive trends in society. Their prolongation and, what is worse, proliferation are matters of great concern as they have already started creating tensions in society. Therefore, the earlier the objectives of reservations are achieved the better.

With this view in mind, it is suggested that reservations based on castes should be confined only to scheduled castes and tribes as provided in the Constitution and, for all other backward communities, appropriate criteria should be prescribed without any reference whatsoever to caste or religion.

Also, in addition to reservations, positive steps in the form of providing training to persons belonging to the reserved categories at every level should be undertaken to upgrade their skills in shortest possible time. These steps along with gradual excluding of creamy layers from the fold of reservation will go a long way in bringing the Backward Classes to the levels of the forward ones and in building self-confidence in them.

Leaders of backward communities should wholeheartedly cooperate in these efforts to obviate the need of reservation in the shortest possible time. For, they should remember that so long as reservations continue, the stigma of backwardness and inferiority complex will not go.

3. Corruption:

Corrupt politicians are the root cause of corruption all around. But they, like Caesar's wife, should be above suspicion. Therefore, codes of conduct for all categories of politicians should be prescribed and ethics committees consisting of highly respected veterans in the field of social services should be appointed to try cases of breach of code of conduct.

The trials should be expeditious and `full proof' of breach of code need not be insisted upon, as, in such cases, it is generally not available. If the needles clearly points to breach, it should suffice to pronounce punishment, which should usually be of the nature of divesting the offender of his post, debarring him from contesting elections, etc. Civil or criminal offences, if any, associated with breach of code of conduct may be tried separately in the normal courts of law.

4. Bureaucracy :

In Government, salaries are linked to budgetary provisions and not to productivity of government servants. How to link pay with productivity needs to be explored. This can be achieved, in some measure at least, if each government servant is given an identifiable job or chunk of a job along with adequate powers and resources and made responsible for its performance. Work distribution exercise needs to be done from this point of view.

Another necessary administrative reform pertains to all-India services. At present they are generalist-oriented. Generalist civil service was all right when it itself was the policy-maker as in the colonial period and the functions to be performed by it were just a few and simple in nature. Today the Ministers themselves are generalists who choose from amongst different policy scenarios presented to them by the civil service. Moreover, today's

State functions are so multifarious and complex that generalist civil servants can hardly be expected to efficiently guide them and work out worthwhile scenarios as choices for policy-making.

We should, therefore, replace the present British generalist model of civil service with the French professional model according to which instead of generalists, specialists are selected to man different departments. Only at senior levels they should be given generalist orientation to enable them to relate the functions of their departments to those of other departments and vice versa.

5. Language of Administration

At present, the influence of English is growing in the country. While there can be two opinions about this development, there can hardly be any doubt that, in a democracy, the work of government should be conducted in the people's language(s). It is estimated that only 3 per cent of the population of India can use English with comfort and another 10 per cent with some discomfort; while the remaining 87 per cent of the people are ignorant about it.

To use English in administration, therefore, mitigates democracy. So we should, without delay, shift to the use of Indian languages in administration. We have now enough technical vocabulary in our languages to make an earnest start, and if needed, more will come in due course. Instead of issuing circulars and other communications in English accompanied by their translation in Hindi, we should now issue them in Hindi accompanied by their translation in the language of the region to which they are to be sent.

The States also should issue them in their regional languages accompanied by their translation into Hindi. Use of common vocabulary of technical terms

and/or use of computer software that provides instant translation from one Indian language into another, would make the change over easiest to attain.

(20)

"The Tribune"
August 28, 2000

Chandigarh Tribune

To review or not to review Constitution

Tribune News Service
CHANDIGARH

Aug 27 — "Though the persons who framed the Indian Constitution were not democratically elected, they were learned men of great eminence," said Justice Rajender Sachhar, a former Chief Justice of the Delhi High Court. He was speaking at a seminar on *Indian Constitution: A Review*.

The two-day seminar began at the Centre for Research in Rural and Industrial Development (CRRID) here today. It was attended by a large number of experts on the Constitution, advocates, judges, political scientists and students of the Indian Constitution. They participated in discussions on the setting-up of a commission for the review of the Constitution.

Justice Sachhar said, before setting up any commission for the review of the Constitution, the matter should have been discussed in detail in the Parliament. "Perhaps the review of the Constitution is a compulsion for the Bharatiya Janata Party which is in search of some issue for its propaganda," he said. Talking about the Article 356, Justice Sachhar said it had been misused by all every political party. "We do not need this Article and we should get rid of it soon," he said.

Professor R.N. Pal of the Department of Political Science in Punjabi University and an expert on the Constitution, said constitution and countries were both legal entities now. "Country represents its people and the Constitution is the basic law to be applied on them. Therefore, when the Constitution becomes unstable, so does the country," he said. However, he also said the Constitution should not be static or too dynamic. "It has to change with society and time. That is why there are always in-built provisions for amendment in every Constitution and India is not an exception."

Professor Pal said although the Constitution did not have any provision for recasting, there were provisions for amendments. "Even Dr B.R. Ambedkar, architect of the Indian Constitution, had specified that it should not be considered the last word."

Justice Rajinder Sachhar (retd) (extreme right) at a seminar on *Indian Constitution: A Review* at the CRRID, Sector 19, Chandigarh, on Sunday. — A Tribune photograph

Professor Pal said 50 years were enough to warrant a comprehensive review of the Constitution. "We have already overhauled the Constitution by making more than 83 amendments and are about to make a few more. However, we have failed to evolve healthy parliamentary institutions like two-party system, non-party speakership and responsible opposition. Criminals have entered politics and leadership has become a game of power brokers," he said.

Professor Pal said the review committee of the Constitution did not include any political scientist, so, it was a minority commission. He suggested a large number of proposals to be included in the Constitutional review.

Mr Rashpal Malhotra, Director of the CRRID, said an idea, matter or model became more relevant when it was interpreted and not reinterpreted according to the changing times. He said the same logic applied to the Constitution of India.

Dr Ranbir Sharma, a former Head of the Department of Political Science in Himachal Pradesh University, said there was a need to reassess the Constitution. "No matter how good a Constitution, a document or a system is, with time, it needs reinterpretation," he said.

"Chandigarh Newsline"
August 28, 2000

Constitution review a political compulsion: Ex-Judge

EXPRESS NEWS SERVICE
CHANDIGARH, AUG 27

CONSTITUTIONAL experts lambasted the setting up of the Constitution Review Panel by the Central Government, which said that it was uncalled for not "broad-based". The experts were participating at a two-day seminar on "Indian Constitution: A Review", organised at the Centre for Research in Rural and Industrial Development (CRRID). Constitutional experts, advocates, judge, political scientists and students of the Indian Constitution participated in the deliberations.

Former Chief Justice of the Delhi High Court Justice Rajender Sachhar said: "Review of the Constitution perhaps is a political compulsion for the Bharatiya Janata Party. For BJP, the Ayodhya issue, the common civil court or Article 370 are not issues today. They are in search of some issue for political propagation. Perhaps, review of the Constitution is a line in that direction."

The other speaker, Professor R.N. Pal, distinguished constitutional expert and professor of Political Science, Punjabi University, Patiala, said: "The review committee of the Constitution is not a representative body. It does not include any political scientist. We can rather term it as a minority commission."

However, Dr Ranbir Sharma, former professor and Head of the Department of Political Science in Himachal Pradesh University (HPU), Shimla said that the time had come to reassess the Constitution and that the bonafides of those who suggested that review should not be doubted.

Justice Sachhar said before setting up a commission to review the Constitution, the matter should have been discussed in the Parliament adding that Article 356 had been greatly misused by political parties according to their own political compulsion. "The sooner we get rid of it better it is," he said.

Professor Pal, while delivering the keynote address, said Constitutions and countries in modern times were indivisible. Both can be termed as legal entities, wherein the country represents the people and Constitution the basic law, to be applied on people. "It will not be an overstatement if I say that when the Constitution becomes unstable, country also does not remain stable," Pal said.

But the Constitution which is the law of the land should be neither too static nor too dynamic, it must fulfill the requirements of the people, the political scientist said. "Being based on accommodation and adjustment, it should change with social changes and necessities of the society. This is how there are always in-built provisions for amending the Constitution. India is no exception. The Constitution does not specify any provision for recasting the Constitution but specifies amending procedures. Even Dr B.R. Ambedkar, considered to be the architect of the Constitution, had said that the framers of the represent Constitution are not the last word on the Constitution," Pal said.

Government Ranbir College, San-

buildings, which were painstakingly collected by him in six

seen inside old buildings

"Hindustan Times"
August 28, 2000

Seminar on review of Constitution held

HT CORRESPONDENT
CHANDIGARH, AUG 27

A TWO-DAY seminar on "Indian Constitution: A Review" was held at Centre for Research in Rural and Industrial Development (CRRID), here today. A large number of constitutional experts, advocates, judges, political scientists and students of the Indian Constitution participated in the deliberations.

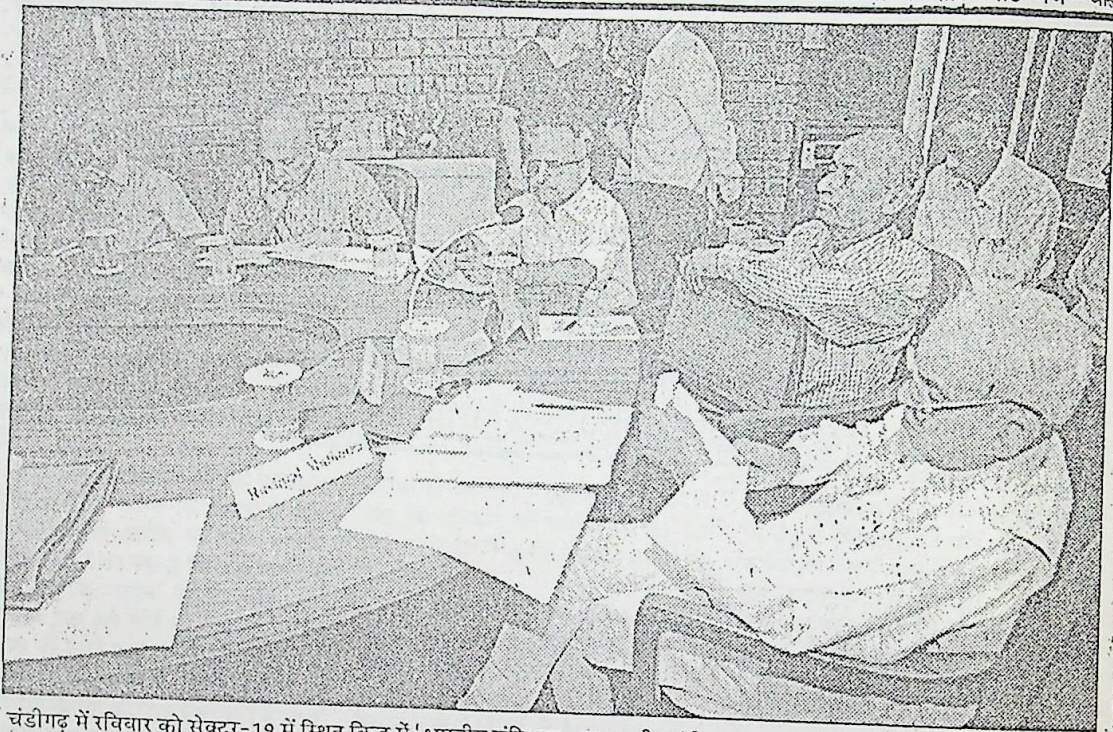
The director of the Centre, Rashpal Malhotra, while welcoming the chief guest and other delegates, said any idea, matter or model becomes more relevant when it is interpreted, rather re-interpreted according to the changing situations and the same applies to the Constitution of India. He said there is a varied and divided opinion on the setting up of a Commission for constitutional review and hoped the deliberations here would make the picture clear.

Former Chief Justice, Delhi High Court, Justice Rajender Sachhar, in his inaugural address, said, "It is usually admitted that the Constitution was framed by people who were not elected directly by the people." Justice Sachhar said before setting up a Commission for review of the Constitution, the entire matter should have been discussed in the Parliament.

He said for the BJP, the Ayodhya issue, Common Civil Court or Article 370 are not the issues today as they are in search of some issue for political propagation. Talking about Article 356, Justice Sachhar said this Article has been greatly misused by every political party according to their own political compulsion.

A distinguished constitutional expert and professor of political sciences, Punjabi University, Patiala, R.N. Pal, delivering the key-note address, said the Constitution and countries in the modern times are indivisible. Both can be legal entities. A country represents the people and the Constitution, the "basic law" to be applied on the people.

"It would not be an overstatement if I say that when the Constitution becomes unstable, the country also does not remain stable. But the Constitution, which is the law of the land, should be neither too static nor too dynamic and must fulfill the requirements of the people," he said. Professor Pal lamented that the review committee of the Constitution is not a representative body. He also suggested that a large number of proposals should be included in the review of the Constitution.

"Dainik Tribune"
August 28, 2000

चंडीगढ़ में रविवार को सेक्टर-19 में स्थित क्रिड में 'भारतीय संविधान : एक समीक्षा' विषय पर आयोजित सेमिनार की अध्यक्षता करते हुए सेवानिवृत्त जस्टिस राजिन्द्र सच्चर (बायें)। चित्र दैनिक ट्रिब्यून पंकज शर्मा

धारा 356 की कोई ज़रूरत नहीं : सच्चर

चंडीगढ़, 27 अगस्त (हप्र)। दिल्ली हाईकोर्ट के पूर्व मुख्य न्यायाधीश राजेंद्र सच्चर ने कहा है कि धारा 356 का सभी राजनीतिक दलों ने अपनी राजनीतिक मजबूरियों के चलते आज तक गलत इस्तेमाल ही किया है। उन्होंने कहा कि दरअसल इस धारा की कोई ज़रूरत ही नहीं है।

ग्रामीण एवं औद्योगिक विकास अनुसंधान केंद्र (क्रिड) में आयोजित दो-दिवसीय 'भारतीय संविधान : एक समीक्षा' विषय पर आयोजित सेमिनार में आज अपने उद्घाटनी भाषण में जस्टिस सच्चर ने कहा कि संविधान की पुनर्समीक्षा के लिये आयोग का गठन करना भाजपा की राजनीतिक मजबूरी थी। उन्होंने कहा कि आयोग का गठन करने से पहले संसद में इस पर व्यापक विचार-विमर्श किया जाना चाहिये था।

उन्होंने कहा भाजपा के लिये अब अयोध्या मुद्दा, समान नागरिक संहिता व धारा 370 कोई खास मुद्दे नहीं रह गये तथा वह राजनीतिक प्रचार के लिये अन्य कुछ मुद्दों की तलाश में है।

उन्होंने कहा कि यह आमतौर पर माना जाता है कि संविधान का निर्माण उन लोगों ने किया, जो कि लोगों द्वारा सीधे तौर पर नहीं चुने गये थे लेकिन संविधान के संस्थापक महान व विद्वान व्यक्ति थे, यह भी एक सच्चाई है।

पंजाबी विश्वविद्यालय पटियाला के प्रोफेसर डा. आर.एन. पाल ने कहा कि देश लोगों का प्रतिनिधित्व करता है और संविधान का मूल है जो लोगों पर लागू हो। संविधान समीक्षा समिति के बारे में उन्होंने कहा कि यह कोई प्रतिनिधि सभा नहीं है और इसमें किसी राजनीतिक शास्त्री को शामिल भी नहीं किया गया। उन्होंने सुझाव दिया कि संविधान समीक्षा में बड़ी संख्या में प्रस्तावों को शामिल किया जाना चाहिये।

हिमाचल प्रदेश विश्वविद्यालय के प्रोफेसर डा. रणवीर शर्मा ने अध्यक्षता करते हुए इस बात पर जोर दिया कि अब समय आ गया है जब समूचे संविधान का पूनर्मल्यांकन किया जाये।

इससे पूर्व क्रिड के निदेशक रशपाल मल्होत्रा ने मुख्य अतिथि व प्रतिनिधियों का स्वागत किया। सेमिनार में देशभर के संविधान विशेषज्ञ, अधिवक्ता, न्यायाधीश, राजनीति शास्त्री आदि भाग ले रहे हैं।

"Dainik Jagran"
August 28, 2000

संविधान समीक्षा आयोग का गठन भाजपा की मजबूरी : सच्चर

जागरण संवाददाता

चंडीगढ़, 27 अगस्त। देश के मानवाधिकार के बड़े ध्वजवाहकों में एक न्यायमूर्ति राजेंद्र सच्चर ने कहा है कि भारतीय संविधान की समीक्षा के लिए आयोग गठित करने से पहले संसद में सारे मामले पर बहस करवाई जानी चाहिए थी। उन्होंने कहा कि संविधान संशोधन के संबंध में समीक्षा आयोग का गठन संभवत: भाजपा की मजबूरी थी।

न्यायमूर्ति राजेंद्र सच्चर आज ग्रामीण तथा औद्योगिक विकास केंद्र चंडीगढ़ के तत्वावधान में आयोजित भारतीय संविधान पुनरावलोकन विषय पर आयोजित दो दिवसीय संगोष्ठी में बोल रहे थे।

दिल्ली उच्च न्यायालय के पूर्व मुख्य न्यायाधीश न्यायमूर्ति सच्चर ने कहा कि भाजपा के लिए संविधान समीक्षा आयोग का गठन संभवत: इसलिए मजबूरी बन गया था कि आज भाजपा के लिए अयोध्या, समान सिविल कोड और अनुच्छेद 370 अब कोई मुद्दे नहीं रह गए हैं। भाजपा को अपने प्रचार के लिए किसी मुद्दे की तलाश की थी। संविधान संशोधन आयोग का गठन इसी कवायद की दिशा में उठाया गया कदम है। भारतीय संविधान की खासी बदनाम रह चुकी अनुच्छेद 356 के बारे में न्यायमूर्ति सच्चर ने कहा कि इस अनुच्छेद का हर राजनीतिक पार्टी ने अपने हितों के लिए दुरुपयोग किया है। उनका यह भी कहना था कि इस अनुच्छेद की कोई जरूरत नहीं है।

पंजाबी विश्वविद्यालय पटियाला में राजनीतिक विज्ञान विभाग में प्रोफेसर आर एन पाल ने कहा कि पचास सालों से भारतीय संविधान के कार्यकाल के अनुभवों को देखते हुए इसकी

भारतीय संविधान पुनरावलोकन विषय पर आयोजित दो दिवसीय संगोष्ठी

समीक्षा की जरूरत का मजबूत आधार है। उन्होंने कहा कि संविधान को पहले से ही 83 बार संशोधनों के रूप में मरम्मत करने की जरूरत पड़ चुकी है।

उन्होंने कहा कि हम इस अवधि में स्वस्थ संसदीय संस्थाओं जैसे दो दलीय व्यवस्था, अध्यक्ष पद पर किसी पार्टी के व्यक्ति को न नियुक्त किया जाना, तथा जिम्मेदार विपक्ष का विकास करने में विफल रहे हैं। उन्होंने इस बात पर खेद प्रकट किया कि कई बार विधायिकाओं की हालत मछलीबाजार से भी बदतर हो जाती है।

प्रो. पाल ने समीक्षा आयोग के स्वरूप पर गहरा रोष जताते हुए कहा कि इसे अल्पसंख्यक आयोग कहना ठीक होगा। उन्होंने कहा कि इसमें कोई भी राजनीति विज्ञानी नहीं है।

अपने अध्यक्षीय संबोधन में हिमाचल प्रदेश विवि. के राजनीति विज्ञान विभाग के पूर्व अध्यक्ष और प्रोफेसर डॉ. रणबीर सिंह ने कहा कि उन्होंने कहा कि राष्ट्रपति की टिप्पणी ने संविधान की समीक्षा के लिए जोर दिया था। उन्होंने कहा कि जिन व्यक्तियों ने संविधान की समीक्षा के लिए सुझाव दिया था उनके इरादों पर संदेह नहीं किया जाना चाहिए। उन्होंने कहा कि इस बात से कोई फर्क नहीं पड़ता कि कोई भी संविधान अथवा कोई कोई दस्तावेज या व्यवस्था कितनी उत्तम है अगर वह समय के साथ कदमताल नहीं कर पाती तो उसकी पुनर्व्याख्या की जानी जरूरी है। यही बात हमारे संविधान के साथ भा जरूरी है।

इससे पूर्व संगोष्ठी के आरंभ होने पर सीआरआर डी के निदेशक रछपाल मलहोत्रा ने आगंतुकों का स्वागत करते हुए विषय प्रवर्तन किया।

"Punjab Kesari"
August 28, 2000

भारतीय संविधान बारे गोष्ठी आयोजित

चंडीगढ़, 27 अगस्त (परवाना): आज यहां क्रिड नामक संस्था द्वारा एक गोष्ठी का आयोजन किया गया, जिसका विषय था 'भारतीय संविधान की समीक्षा।' गोष्ठी को कई बुद्धिजीवियों व विधि विशेषज्ञों ने संबोधित किया।

क्रिड के निदेशक रछपाल मल्होत्रा ने उपस्थित लोगों का स्वागत करते हुए विचार व्यक्त किया कि संविधान की समीक्षा करने तथा उसमें संशोधन करने के बारे में देश भर में कई तरह के विचार पाए जा रहे हैं। गोष्ठी में दिल्ली उच्च न्यायालय के पूर्व मुख्य न्यायाधीश राजेंद्र सच्चर, पंजाबी विश्वविद्यालय के प्रो. आर.एन. पाल तथा हिमाचल प्रदेश वि.वि. के डा. रनबीर शर्मा आदि ने भी अपने विचार व्यक्त किए। इनमें से कुछ वक्ताओं ने कहा कि जरूरत व समयानुसार संविधान में संशोधन करना कोई बुरी बात नहीं। एक प्रवक्ता का कहना था कि संविधान की धारा 356 का बार-बार बुरी तरह दुरुपयोग किया गया। इसलिए समय आ गया है कि अब इस धारा को खत्म कर दिया जाए।

"Dainik Bhaskar"
August 28, 2000

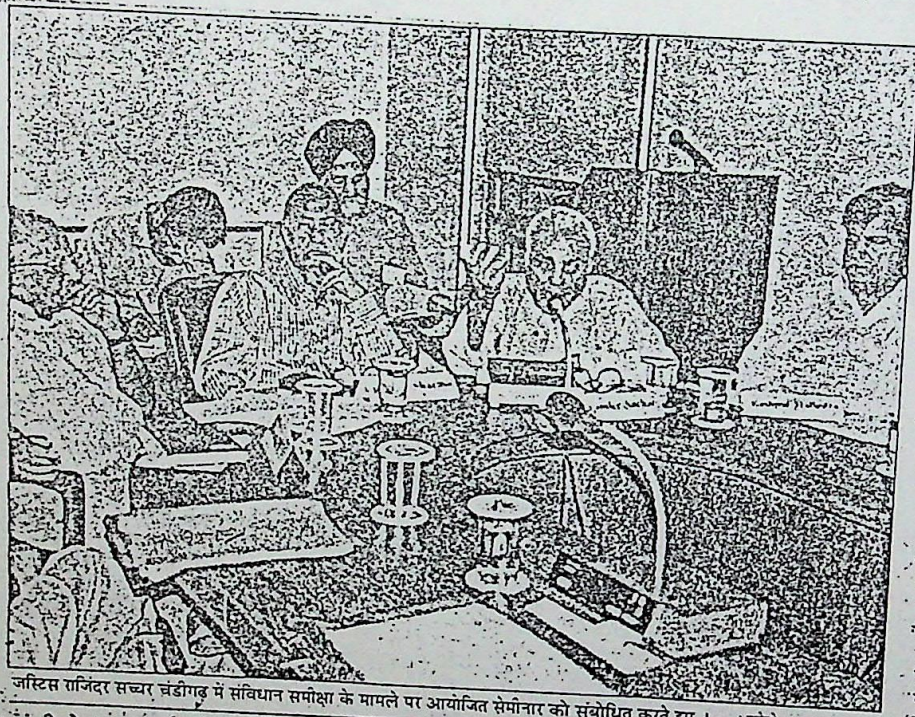
'भारतीय संविधान में सुधार की जरूरत'

भास्कर समाचार सेवा

चंडीगढ़, 27 अगस्त। दिल्ली हाईकोर्ट के पूर्व मुख्य न्यायाधीश राजेंद्र सच्चर का कहना है कि हर राजनीतिक पार्टी ने अधिनियम 356 का अपने तरीके से गलत इस्तेमाल किया है। श्री सच्चर का मानना है कि इस अधिनियम की कोई जरूरत नहीं है इससे जल्द छुटकारा पाना ही बेहतर होगा। सेक्टर-19 के सेंटर फॉर रिसर्च इन रूरल एंड इंडस्ट्रियल डवलपमेंट (क्रिड) में रविवार को 'भारतीय संविधान एक समीक्षा' विषय पर आयोजित सेमिनार का उद्घाटन करते हुए राजेंद्र सच्चर ने कहा कि भारतीय संविधान के निर्माताओं का लोगों द्वारा चुने गए प्रतिनिधि न होना गलत है। उनके मुताबिक संविधान को तैयार करने वालों में देश के प्रमुख शिक्षा विशेषज्ञ शामिल थे।

उनका कहना है कि भारतीय संविधान में संशोधन करने से पहले लोकसभा में इस पर लंबी बहस कराई जानी चाहिए। उनका कहना है कि भाजपा के लिए इन दिनों अयोध्या में राम मंदिर का निर्माण, समान अधिकार संहिता और अधिनियम 370 की समाप्ति मुख्य मुद्दे नहीं हैं। इस कारण वह जनाधार जीतने के लिए भारतीय संविधान में संशोधन करना चाहती है। पंजाबी यूनिवर्सिटी, पटियाला में राजनीति शास्त्र विभाग के प्रोफेसर और संविधान विशेषज्ञ प्रो. आर.एन. पाल का कहना है कि देश लोगों का प्रतिनिधित्व करता है और देश का कानून संविधान के जरिए लोगों पर लागू होता है। उन्होंने संविधान समीक्षा के बारे में जोर देते हुए इसे समय की मांग के अनुसार जरूरी बताया।

उन्होंने कहा कि संविधान के निर्माता डॉ. भीमराव आंबेडकर का भी यह मानना था कि इसमें लिखी गई सभी बातें अंतिम अक्षर नहीं हैं, इसमें जरूरत पर बदलाव किया जा सकता है। प्रो. पाल का कहना है कि देश की आजादी के 50 साल बीतने पर परिस्थितियों में हुए परिवर्तन को देखते हुए भारतीय संविधान में संशोधन आवश्यक है। 50 साल पहले तैयार किए गए संविधान में लगभग 83 से अधिक संशोधन हो चुके हैं और निकट भविष्य में कुछ अन्य सुधार संभव हैं। हम पार्लियामेंट में मजबूत सरकार और जिम्मेदार विपक्ष देने में भी विफल रहे हैं। पार्लियामेंट एक मछली मार्केट बनकर रह गई हैं। राजनीतिक सत्ता हथियाने के लिए अपराधियों का संरक्षण लेने से भी नहीं हिचकिचाते। हिमाचलप्रदेश यूनिवर्सिटी, शिमला में राजनीति शास्त्र विभाग के अध्यक्ष डॉ. रणवीर शर्मा ने भी सेमिनार में संविधान संशोधन को आवश्यक बताया। प्रो. एम.पी. सिंह ने चुनाव प्रक्रिया में सुधार पर जोर देते हुए राजनीति में अपराधिकरण पर रोक लगाने की मांग की।

"Amar Ujala"
August 28, 2000

जस्टिस राजिंदर सच्चर चंडीगढ़ में संविधान समीक्षा के मामले पर आयोजित सेमीनार को संबोधित करते हुए। फोटो : अमरउजाला

अनुच्छेद 356 की जरूरत नहीं : सच्चर

अमर उजाला ब्यूरो
चंडीगढ़, 27 अगस्त

राष्ट्रीय जनतांत्रिक गठबंधन का हिस्सा रहते हुए भाजपा जिन सवालों को अपने किसी मंच पर नहीं उठा सकती थी, संविधान समीक्षा कमेटी का गठन करके उसने इसके लिए एक मंच तैयार कर लिया है। इस का खतरनाक पक्ष यह है कि संविधान समीक्षा के नाम पर दबी पड़ी कई बातों को राष्ट्रीय स्तर पर बहस का मुद्दा बनाने का मौका मिल गया है। संविधान समीक्षा के मामले पर पहले संसद में बहस होनी चाहिए थी, लेकिन ऐसा नहीं किया गया। संविधान में अनुच्छेद 356 की कोई जरूरत नहीं है, इसके बारे में जो तर्क दिए जा रहे हैं उनमें कोई भी ठोस नहीं है। यह विचार जस्टिस राजिंदर सच्चर ने आज चंडीगढ़ में ग्रामीण व औद्योगिक विकास के लिए खोज केंद्र द्वारा आयोजित 'भारतीय संविधान-एक समीक्षा' विषय पर आयोजित एक सेमीनार को संबोधित करते हुए व्यक्त किए।

जस्टिस सच्चर ने कहा कि राष्ट्रीय स्वंय सेवक संघ भाजपा के माध्यम से अपना हिंदुत्व का एजेंडा लागू करना चाहता है। गठबंधन की 'मजबूरी के कारण भाजपा को देश में समान आचार संहिता, अनुच्छेद 370 का खात्मा तथा अयोध्या में राम मंदिर बनाने जैसे मुद्दे छोड़ने पड़े लेकिन वह इनको किसी न किसी तरीके से उठाना चाहती है। इसके लिए संविधान समीक्षा आयोग से अच्छा मंच कोई नहीं हो सकता। यदि भाजपा इसके प्रति गंभीर थी तो पहले उसे इस पर संसद में बहस करानी चाहिए थी। उन्होंने कहा कि यह सभी को मालूम है कि संसद में दो-तिहाई बहुमत न होने के कारण इसकी सिफारिशें पारित नहीं होंगी, लेकिन इससे भाजपा का यह लक्ष्य पूरा हो जाएगा कि उक्त

पहले संसद में बहस होनी चाहिए थी संविधान समीक्षा पर

बातें जो मजबूरी के कारण उसे छोड़नी पड़ीं, उनको राष्ट्रीय स्तर पर बहस का मुद्दा बनाया जाए।

संविधान में तब्दीलियां करने के बारे में उन्होंने कहा कि अनुच्छेद 356 की कोई जरूरत नहीं है। इसके लिए तर्क दिया जा रहा है कि इससे केंद्र के पास देश की एकता कायम रखने का कोई हथियार नहीं बचेगा। इस तर्क में कोई दम नहीं है, क्योंकि इस अनुच्छेद का 93 बार इस्तेमाल किया गया और हर बार इसका दुरुपयोग हुआ। प्रत्येक पार्टी ने इसको अपने निजी हितों के लिए इस्तेमाल किया। दूसरा, आज कोई भी नेता राष्ट्रीय स्तर के व्यक्तित्व वाला नहीं है।

सच्चर ने कहा कि संसद का कार्यकाल पूरे पांच वर्ष तय करने का संशोधन संविधान की मूल भावना के विपरीत है। संविधान के अनुसार लोग प्रभुता संपन्न हैं न कि संसद। इसलिए यदि कोई प्रतिनिधि लोगों की इच्छा के अनुरूप कार्य नहीं करते तो लोगों का अधिकार है कि वे अन्य प्रतिनिधियों का चयन कर सकें। यह बात इस तथ्य से स्पष्ट होती है कि गत लोकसभा के 50 फीसदी सांसद इस बार चुनाव हार गए थे, क्योंकि लोगों ने उन्हें खारिज कर दिया था। गलत लोगों को स्थिरता के नाम पर पूरा समय रहने की इजाजत नहीं दी जा सकती। देश में दो दलीय प्रणाली भी लोकतांत्रिक मूल्यों के अनुसार नहीं है। यदि एक आजाद व्यक्ति भी लोगों की इच्छा के मुताबिक काम करता है लोग उसे सांसद बनाना चाहते हैं तो इस तर्क पर कि उसको दोनों में से किसी पार्टी ने अपना उम्मीदवार नहीं बनाया, उसके स्थान पर किसी निकम्मे व्यक्ति को संसद में भेजना किसी के हित में नहीं होगा।

अपने भाषण में पंजाबी विश्वविद्यालय पटियाला के राजनीतिक विभाग के प्रो. आर.एन. पाल ने संविधान समीक्षा पर जोर देते हुए कहा कि जिस संविधान में 83 संशोधन हो चुके हैं, उसकी पूरी तरह समीक्षा करने में किसी को क्या एतराज हो सकता है। उन्होंने अनुच्छेद 370 को खत्म करने अथवा 356 का गलत इस्तेमाल रोकने के लिए उपाय करने की मांग की। प्रो. पाल ने कहा कि संविधान समीक्षा कमेटी प्रतिनिधि संस्था नहीं है, क्योंकि इसमें में किसी भी राजनीति विज्ञानी को शामिल नहीं किया गया है। पूरी कमेटी में बहुसंख्यक समुदाय के केवल दो सदस्य हैं, इसलिए इस कमेटी को केवल अल्पसंख्यक आयोग कहा जा सकता है। उन्होंने इसका दायरा बढ़ाने पर जोर दिया।

हिमाचल प्रदेश विश्वविद्यालय शिमला के राजनीति विभाग के पूर्व प्रमुख डॉ. रणबीर शर्मा ने कहा कि संविधान का पूरा जायजा लेने का यह उचित समय है। संविधान समीक्षा कमेटी में सभी योग्य व्यक्ति शामिल किए गए हैं इस पर किसी को संदेह नहीं होना चाहिए। सेमीनार में अन्य के अलावा प्रो. एम.पी. सिंह, डॉ. रमेश मैदान, डॉ.एस.एस. टिवाना, डॉ. आर.के. गुप्ता, राज्य के पूर्व मुख्य सचिव टी.के.ए. नायर, डॉ. दविंदर नाथ पाल, डॉ.वी.पी.दुबे तथा डॉ.एस.आर. अलंदर ने भी अपने विचार व्यक्त किए।

"Desh Savak"
August 28, 2000

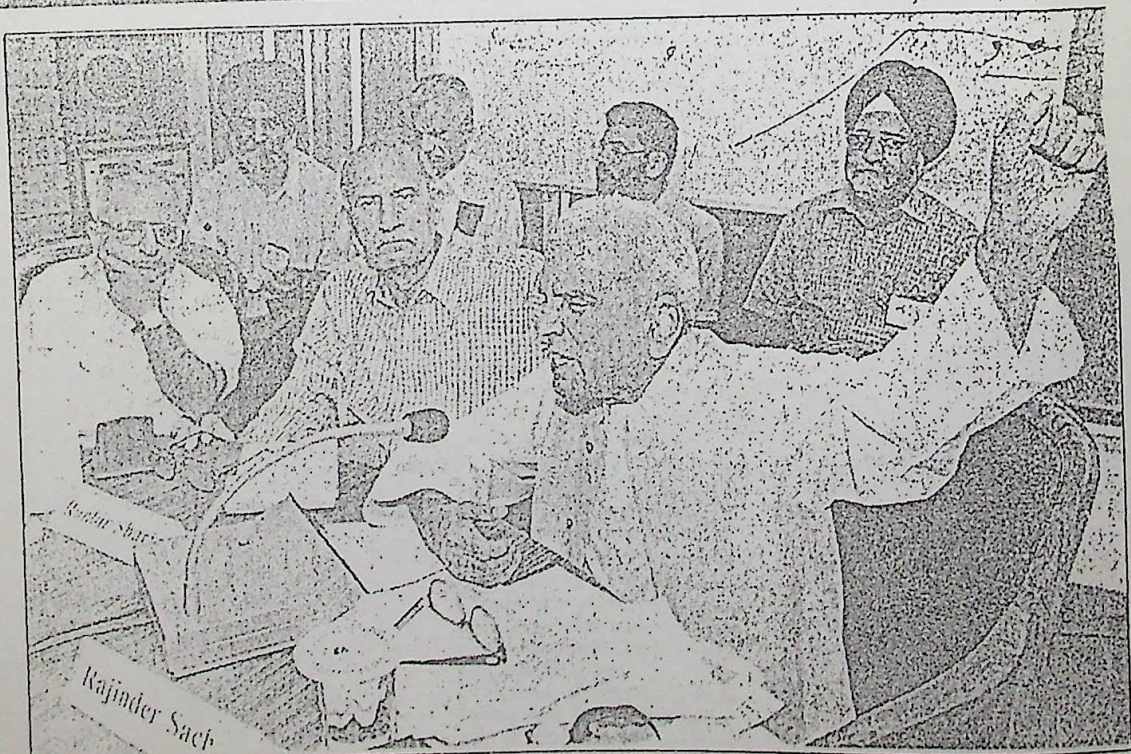
ਸੰਵਿਧਾਨ ਸਮੀਖਿਆ ਬਾਰੇ ਪਹਿਲਾਂ ਸੰਸਦ 'ਚ ਵਿਚਾਰ ਹੋਣੀ ਚਾਹੀਦੀ ਸੀ—ਜਸਟਿਸ ਸੱਚਰ

ਚੰਡੀਗੜ੍ਹ/27 ਅਗਸਤ/ਗੁਰਉਪਦੇਸ਼ ਭੁੱਲਰ

ਭਾਰਤੀ ਸੰਵਿਧਾਨ ਦੀ ਸਮੀਖਿਆ ਵਿਸ਼ੇ 'ਤੇ ਦੋ ਦਿਨਾ ਰਾਸ਼ਟਰੀ ਸੈਮੀਨਾਰ ਇੱਥੇ ਸੈਂਟਰ ਫਾਰ ਰਿਸਰਚ ਇਨ ਰੂਰਲ ਐਂਡ ਇੰਡਸਟਰੀਅਲ ਡਿਵੈਲਪਮੈਂਟ (ਕਰਿੱਡ) ਵਿਖੇ ਅੱਜ ਸ਼ੁਰੂ ਹੋਇਆ। ਇਸਦਾ ਉਦਘਾਟਨ ਦਿੱਲੀ ਹਾਈ ਕੋਰਟ ਦੇ ਸਾਬਕਾ ਚੀਫ਼ ਜਸਟਿਸ ਸ੍ਰੀ ਰਜਿੰਦਰ ਸੱਚਰ ਨੇ ਕੀਤਾ।

ਇਸ ਸੈਮੀਨਾਰ ਵਿਚ ਦੇਸ਼ ਭਰ ਵਿਚੋਂ 100 ਦੇ ਕਰੀਬ ਪ੍ਰਸਿੱਧ ਸੰਵਿਧਾਨਕ ਤੇ ਕਾਨੂੰਨੀ ਮਾਹਿਰ, ਵਕੀਲ, ਰਾਜਨੀਤੀ ਸ਼ਾਸ਼ਤਰੀ ਤੇ ਖੋਜ ਕਰ ਰਹੇ ਵਿਦਿਆਰਥੀ ਹਿੱਸਾ ਲੈ ਰਹੇ ਹਨ।

ਜਸਟਿਸ ਸੱਚਰ ਨੇ ਉਦਘਾਟਨੀ ਭਾਸ਼ਣ ਵਿਚ ਕਿਹਾ ਕਿ ਸੰਵਿਧਾਨ ਸਮੀਖਿਆ ਕਮੇਟੀ ਗਠਿਤ ਕਰਨ ਤੋਂ ਪਹਿਲਾਂ ਇਸ ਸਬੰਧੀ ਸੰਸਦ ਵਿਚ ਵਿਚਾਰ ਹੋਣੀ ਚਾਹੀਦੀ ਸੀ। ਉਨ੍ਹਾਂ ਵਿਚਾਰ ਪ੍ਰਗਟ ਕੀਤਾ ਕਿ ਸੰਵਿਧਾਨ ਸਮੀਖਿਆ ਭਾਜਪਾ ਦੀ ਇੱਕ ਰਾਜਨੀਤੀ ਮਜਬੂਰੀ ਬਣ ਗਿਆ ਕਿਉਂਕਿ ਅਯੁੱਧਿਆ ਮਸਲਾ, ਧਾਰਾ 370 ਤੇ ਸਿਵਲ ਕੋਡ ਵਰਗੇ ਮਸਲੇ ਠੰਢੇ ਪੈ ਜਾਣ ਕਾਰਨ ਉਸਨੂੰ ਕੁੱਝ ਅਜਿਹੇ ਮੁੱਦਿਆਂ ਦੀ ਭਾਲ ਸੀ, ਜਿਸ ਨਾਲ ਉਹ ਕਿਸੇ ਤਰੀਕੇ ਆਪਣਾ ਰਾਜਨੀਤਿਕ ਪ੍ਰਚਾਰ ਜਾਰੀ ਰੱਖ ਸਕੇ। ਧਾਰਾ 356 ਬਾਰੇ ਗੱਲ ਕਰਦਿਆਂ ਸੱਚਰ ਨੇ ਕਿਹਾ ਕਿ ਇਸਦੀ ਵਾਰ-ਵਾਰ ਰਾਜਨੀਤਿਕ ਪਾਰਟੀਆਂ ਨੇ ਆਪਣੇ ਸਿਆਸੀ ਹਿਤਾਂ ਲਈ ਦੁਰਵਰਤੋਂ ਕੀਤੀ ਹੈ। ਉਨ੍ਹਾਂ ਕਿਹਾ ਕਿ ਇਸ ਕਰਕੇ ਹੀ ਧਾਰਾ 356 ਦਾ ਕੋਈ ਖ਼ਾਸ ਲਾਭ ਨਹੀਂ ਤੇ ਇਸਨੂੰ ਸੰਵਿਧਾਨ ਵਿਚੋਂ ਖ਼ਤਮ ਹੀ ਕਰ ਦਿੱਤਾ ਜਾਣਾ ਬੇਹਤਰ ਰਹੇਗਾ। ਸੱਚਰ ਨੇ ਕਿਹਾ ਕਿ ਇਹ ਗੱਲ ਠੀਕ ਹੈ ਕਿ ਸੰਵਿਧਾਨ ਦਾ ਨਿਰਮਾਤਾ ਲੋਕਾਂ ਦੁਆਰਾ ਚੁਣਿਆ ਪ੍ਰਤੀਨਿਧ ਨਹੀਂ ਸੀ ਪਰ ਉਹ ਇਕ ਮਹਾਨ ਸ਼ਖਸੀਅਤ ਤੇ ਪ੍ਰਸਿੱਧ ਸਕਾਲਰ ਸੀ। ਉਨ੍ਹਾਂ ਦੋ ਪਾਰਟੀ ਸਿਸਟਮ ਦਾ ਵੀ ਵਿਰੋਧ ਕੀਤਾ। ਸੱਚਰ ਨੇ ਕਿਹਾ ਕਿ ਸੰਵਿਧਾਨ ਸਮੀਖਿਆ ਦੀਆਂ ਸਿਫ਼ਾਰਸ਼ਾਂ ਸੰਸਦ ਵਿਚ ਪਾਸ ਵਿਚ ਨਹੀਂ ਹੋ ਸਕਣਗੀਆਂ ਕਿਉਂਕਿ ਦੋ ਤਿਹਾਈ ਬਹੁਮਤ ਦੀ ਲੋੜ ਹੈ। ਪੰਜਾਬੀ ਯੂਨੀਵਰਸਿਟੀ ਦੇ ਰਾਜਨੀਤੀ ਸ਼ਾਸ਼ਤਰ ਵਿਭਾਗ ਦੇ ਪ੍ਰੋ. ਆਰ.ਐਨ. ਪਾਲ ਨੇ ਕੁੰਜੀਵਤ ਭਾਸ਼ਣ ਪੜ੍ਹਿਆ। ਕਰਿੱਡ ਦੇ ਡਾਇਰੈਕਟਰ ਰਛਪਾਲ ਮਲਹੋਤਰਾ ਤੋਂ ਇਲਾਵਾ ਹਿਮਾਚਲ ਯੂਨੀਵਰਸਿਟੀ ਦੇ ਪ੍ਰੋ. ਰਣਬੀਰ ਸ਼ਰਮਾ, ਡਾ. ਰਮੇਸ਼ ਮਦਾਨ, ਡਾ. ਐਸ.ਐਸ. ਟਿਵਾਣਾ, ਡਾ. ਆਰ.ਕੇ. ਗੁਪਤਾ, ਟੀ.ਕੇ.ਏ. ਨਾਇਰ, ਡਾ. ਵੀ.ਪੀ. ਦੂਬੇ ਤੇ ਡਾ. ਐਸ.ਆਰ. ਅਲਵਰ ਨੇ ਵੀ ਆਪਣੇ ਪਰਚੇ ਪੇਸ਼ ਕੀਤੇ। (ਫੋਟੋ ਸਫ਼ਾ 3 'ਤੇ)

ਦੇਸ਼ ਸੇਵਕ, ਚੰਡੀਗੜ੍ਹ, ਸੋਮਵਾਰ, 28 ਅਗਸਤ, 2000

ਸੰਵਿਧਾਨ ਸਮੀਖਿਆ ਬਾਰੇ ਕਰਿੱਡ 'ਚ ਸ਼ੁਰੂ ਹੋਏ ਦੋ ਰੋਜ਼ਾ ਰਾਸ਼ਟਰੀ ਸੈਮੀਨਾਰ ਦੇ ਉਦਘਾਟਨੀ ਸੈਸ਼ਨ ਨੂੰ ਸੰਬੋਧਨ ਕਰਦੇ ਸਾਬਕਾ ਚੀਫ਼ ਜਸਟਿਸ ਸ੍ਰੀ ਰਜਿੰਦਰ ਸੱਚਰ। ਫ਼ੋਟੋ : ਦੇਸ਼ ਸੇਵਕ/ਅਜੇ ਵਰਮਾ

"Punjabi Tribune"
August 28, 2000

ਕਰਿਡ ਵਲੋਂ ਐਤਵਾਰ ਨੂੰ ਚੰਡੀਗੜ੍ਹ ਵਿਚ ਭਾਰਤੀ ਸੰਵਿਧਾਨ ਦੇ ਜਾਇਜ਼ੇ ਬਾਰੇ ਕਰਾਏ ਗਏ ਇਕ ਸੈਮੀਨਾਰ ਵਿਚ ਸ਼ਾਮਲ ਵਿਦਵਾਨ। (ਫੋਟੋ: ਪੰਕਜ ਸ਼ਰਮਾ)

...ਚੜ੍ਹਾ ਹੈ. ਨਾਲ ਸ਼ਹਿਰ 'ਚ ਪਹਿਲਾਂ ਹੀ ਹੁਸੈਨ ਸਾਗਰ ਦੇ ਪਟੇ ਪਾੜ ਦੀ ਤਬਾਹੀ 'ਚ ਹੋਰ ਵੀ ਵਾਧਾ ਹੋਣ ਦੀ ਸੰਭਾਵਨਾ ਹੈ। ਫਿਰ ਵੀ ਸੈਨਾ ਦੇ ਇੰਜੀਨੀਅਰ

ਵੀਰੱਪਨ ਦੀ ਮੰਗ 'ਤੇ 5 ਕਰੋੜ ਰੁਪਏ ਰਾਖਵੇਂ ਕਰਨ ਦੇ ਆਦੇਸ਼

ਚੇਨਈ, 27 ਅਗਸਤ (ਯੂ. ਐਨ. ਆਈ.)- ਵੀਰੱਪਨ ਦੀਆਂ ਦੋ ਮੁੱਖ ਮੰਗਾਂ ਵਿਚੋਂ ਇਕ ਨੂੰ ਮੰਨਦਿਆਂ ਤਾਮਿਲਨਾਡੂ ਸਰਕਾਰ ਨੇ ਵਿਸ਼ੇਸ਼ ਟਾਸਕ ਫੋਰਸ ਦੀਆਂ ਵਧੀਕੀਆਂ ਦੇ ਸ਼ਿਕਾਰ ਲੋਕਾਂ ਲਈ 5 ਕਰੋੜ ਰੁਪਏ ਰਾਖਵੇਂ ਕਰਨ ਦੇ ਆਦੇਸ਼ ਦੇ ਦਿੱਤੇ ਹਨ। ਦੂਜੇ ਪਾਸੇ ਸਰਕਾਰੀ ਏਲਚੀ ਸ੍ਰੀ ਆਰ. ਆਰ. ਗੋਪਾਲ ਤੀਜੀ ਵਾਰ ਜੰਗਲ ਵਿਚ ਜਾਣ ਲਈ ਤਿਆਰ ਹਨ। ਵੀਰੱਪਨ ਨੇ ਕੰਨੜ ਫਿਲਮਾਂ ਦੇ ਪ੍ਰਸਿੱਧ ਅਦਾਕਾਰ ਡਾ. ਰਾਜ ਕੁਮਾਰ ਅਤੇ ਤਿੰਨ ਹੋਰਨਾਂ ਨੂੰ ਕਰੀਬ ਇਕ ਮਹੀਨਾ ਪਹਿਲਾਂ ਅਗਵਾ ਕਰ ਲਿਆ ਸੀ। ਸਰਕਾਰੀ ਏਲਚੀ ਸ੍ਰੀ ਗੋਪਾਲ ਨੇ ਜਦੋਂ ਉਹਦੇ

(ਬਾਕੀ ਸਫਾ 8 ਕਾਲਮ 7)

ਧਾਰਾ 356 ਨੂੰ ਸੰਵਿਧਾਨ 'ਚ ਰੱਖਣ ਦੀ ਲੋੜ ਨਹੀਂ: ਸੱਚਰ

ਚੰਡੀਗੜ੍ਹ, 27 ਅਗਸਤ (ਬਲਵਿੰਦਰ ਜੰਮੂ)- 'ਹਰੇਕ ਪਾਰਟੀ ਨੇ ਸੰਵਿਧਾਨ ਦੀ ਧਾਰਾ 356 ਦੀ ਦੁਰਵਰਤੋਂ ਕੀਤੀ ਹੈ। ਇਸ ਧਾਰਾ ਨੂੰ ਸੰਵਿਧਾਨ 'ਚ ਕਾਇਮ ਰੱਖਣ ਦੀ ਕੋਈ ਲੋੜ ਨਹੀਂ ਹੈ। ਜੇ ਇਸ ਧਾਰਾ ਨੂੰ ਬਰਕਰਾਰ ਰੱਖਿਆ ਗਿਆ ਤਾਂ ਭਵਿੱਖ ਵਿਚ ਇਸ ਦੀ ਦੁਰਵਰਤੋਂ ਦੀ ਸੰਭਾਵਨਾ ਬਣੀ ਰਹੇਗੀ। ਇਸ ਲਈ ਇਸ ਧਾਰਾ ਨੂੰ ਖਤਮ ਕਰ ਦਿੱਤਾ ਜਾਵੇ।'

ਇਹ ਵਿਚਾਰ ਦਿੱਲੀ ਹਾਈ ਕੋਰਟ ਦੇ ਸਾਬਕਾ ਚੀਫ ਜਸਟਿਸ ਸ੍ਰੀ ਰਾਜਿੰਦਰ ਸੱਚਰ ਨੇ 'ਭਾਰਤੀ ਸੰਵਿਧਾਨ ਇਕ ਮੁਲਾਂਕਣ' ਵਿਸ਼ੇ ਬਾਰੇ ਕਰਿਡ ਵਲੋਂ ਕਰਵਾਏ ਜਾ ਰਹੇ ਦੋ-ਰੋਜ਼ਾ ਸੈਮੀਨਾਰ ਦੇ ਉਦਘਾਟਨੀ ਭਾਸ਼ਣ 'ਚ ਅੱਜ ਕਹੇ। ਉਨ੍ਹਾਂ ਕਿਹਾ ਕਿ ਕੋਈ ਜ਼ਮਾਨਾ ਸੀ ਜਦੋਂ ਕੌਮੀ ਆਗੂ ਹੁੰਦੇ ਸਨ। ਅੱਜ ਪ੍ਰਧਾਨ ਮੰਤਰੀ ਸ੍ਰੀ ਅਟਲ ਬਿਹਾਰੀ ਵਾਜਪਾਈ ਨੂੰ ਛੱਡ ਕੇ ਹੋਰ ਕੋਈ ਆਗੂ ਕੌਮੀ ਕੱਦ ਵਾਲਾ ਨਹੀਂ ਹੈ। ਕੇਂਦਰ ਸਰਕਾਰ 'ਚ ਸ਼ਾਮਲ ਲਗਪਗ ਸਾਰੇ ਆਗੂ ਸੂਬਾਈ ਹਨ। ਉਨ੍ਹਾਂ ਆਪਣੀ ਗੱਲ ਸਪਸ਼ਟ ਕਰਦਿਆਂ ਕਿਹਾ ਕਿ ਜੇ ਸੂਬਾਈ ਆਗੂ ਕੇਂਦਰ 'ਚ ਵਜ਼ੀਰ ਬਣ ਕੇ ਕੇਂਦਰ ਸਰਕਾਰ ਨੂੰ ਠੀਕ ਢੰਗ ਨਾਲ ਚਲਾ ਸਕਦੇ ਹਨ ਤਾਂ ਸੂਬਾਈ ਸਰਕਾਰਾਂ ਚਲਾਉਣਾ ਇਨ੍ਹਾਂ ਲਈ ਕੋਈ ਔਖਾ ਕੰਮ ਨਹੀਂ ਹੈ। ਜੇ ਕੋਈ ਸੂਬਾਈ ਸਰਕਾਰ ਦੇਸ਼ ਦੀ ਏਕਤਾ ਤੇ ਅਖੰਡਤਾ ਲਈ ਖਤਰਾ ਪੇਸ਼ ਕਰੇ ਤਾਂ ਕੇਂਦਰੀ ਸੁਰੱਖਿਆ ਬਲ ਭੇਜ ਕੇ ਖਤਰੇ ਨਾਲ ਨਿਪਟਿਆ ਜਾ ਸਕਦਾ ਹੈ। ਇਸ ਲਈ ਧਾਰਾ 356 ਨੂੰ ਰੱਖਣ ਦੀ ਕੋਈ ਤੁਕ ਨਹੀਂ ਹੈ।

ਦੇਸ਼ ਦੀ ਜਮਹੂਰੀ ਪ੍ਰਣਾਲੀ ਦੀ ਚਰਚਾ ਕਰਦਿਆਂ ਉਨ੍ਹਾਂ ਇਸ ਤਜਵੀਜ਼ ਦਾ ਵਿਰੋਧ ਕੀਤਾ ਕਿ ਜੇ ਕਿਸੇ ਪਾਰਟੀ ਨੂੰ ਪੰਜ ਫੀਸਦੀ ਵੋਟਾਂ ਨਹੀਂ ਮਿਲਦੀਆਂ ਤਾਂ ਉਸ ਦੀ ਮਾਨਤਾ ਰੱਦ ਕਰ ਦਿੱਤੀ ਜਾਵੇ। ਉਨ੍ਹਾਂ ਕਿਹਾ ਕਿ ਜੇ ਅਜਿਹਾ ਕੀਤਾ ਤਾਂ ਇਸ ਨਾਲ ਬਹੁ-ਪਾਰਟੀ ਪ੍ਰਣਾਲੀ ਖਤਮ ਹੋ ਜਾਵੇਗੀ ਤੇ ਦੋ-ਪਾਰਟੀ ਪ੍ਰਣਾਲੀ ਲਈ ਰਾਹ ਪੱਧਰਾ ਹੋ ਜਾਵੇਗਾ। ਉਨ੍ਹਾਂ ਕਿਹਾ ਕਿ ਸਾਡੇ ਦੇਸ਼ ਲਈ ਬਹੁ-ਪਾਰਟੀ ਪ੍ਰਣਾਲੀ ਹੀ ਸਹੀ ਹੈ ਤੇ ਇਸ ਨੂੰ ਬਹਾਲ ਰੱਖਣ ਦੀ ਲੋੜ ਹੈ।

ਸੰਵਿਧਾਨ ਦੀ ਸਮੀਖਿਆ ਸਬੰਧੀ ਬਣਾਏ ਕਮਿਸ਼ਨ ਬਾਰੇ ਉਨ੍ਹਾਂ ਕਿਹਾ ਕਿ ਭਾਜਪਾ ਜਿਸ ਮਸਲੇ ਬਾਰੇ ਸਿੱਧੇ ਤੌਰ 'ਤੇ ਬਹਿਸ ਨਹੀਂ ਸੀ ਕਰਵਾ ਸਕਦੀ. ਇਸ ਨੇ ਇਹ ਗੱਲ ਕੌਮੀ ਜਮਹੂਰੀ ਗਠਜੋੜ ਰਾਹੀਂ ਕਰਵਾ ਕੇ ਖਤਰਨਾਕ ਖੇਡ ਖੇਡਣੀ ਸ਼ੁਰੂ ਕਰ ਦਿੱਤੀ ਹੈ। ਬਹਿਸ ਸ਼ੁਰੂ ਕਰਾਉਣ ਪਿੱਛੇ ਇਸ ਦਾ ਮੰਤਵ ਕੁਝ ਹੋਰ ਹੈ। ਉਨ੍ਹਾਂ ਕਿਹਾ ਕਿ ਕਮਿਸ਼ਨ ਬਣਾਉਣ ਤੋਂ ਪਹਿਲਾਂ ਇਸ ਬਾਰੇ ਸੰਸਦ 'ਚ ਬਹਿਸ ਹੋਣੀ ਚਾਹੀਦੀ ਸੀ।

ਜਸਟਿਸ ਸੱਚਰ ਨੇ ਲਾਲਾ ਲਾਜਪਤ ਰਾਏ ਤੇ ਸ਼ਹੀਦ ਭਗਤ ਸਿੰਘ ਨੂੰ ਸ਼ਹੀਦ ਨਾ ਮੰਨਣ ਬਾਰੇ ਕੁਝ ਧਿਰਾਂ ਵਲੋਂ ਕੀਤੇ ਜਾ ਰਹੇ ਕਿੰਤੂ ਪ੍ਰੰਤੂ 'ਤੇ ਸਖਤ ਇਤਰਾਜ਼ ਕਰਦਿਆਂ ਕਿਹਾ ਕਿ ਇਹ ਧਿਰਾਂ ਪੰਜਾਬ ਦੀ ਵਿਰਾਸਤ ਨੂੰ ਤਬਾਹ ਕਰਨਾ ਚਾਹੁੰਦੀਆਂ ਹਨ। ਉਨ੍ਹਾਂ ਕਿਹਾ ਕਿ ਇਨ੍ਹਾਂ ਦੋਵਾਂ ਆਗੂਆਂ ਨੇ ਦੇਸ਼ ਦੀ ਆਜ਼ਾਦੀ ਲਈ ਆਪਣੀਆਂ ਜਾਨਾਂ ਨਿਛਾਵਰ ਕੀਤੀਆਂ ਹਨ ਤੇ ਇਨ੍ਹਾਂ ਬਾਰੇ ਅਜਿਹੀ ਟਿੱਪਣੀ ਕਰਨਾ ਮੁਕੰਮਲ ਤੌਰ 'ਤੇ ਗੁੰਮਰਾਹਕੁਨ ਹੈ।

ਉਨ੍ਹਾਂ ਕਿਹਾ ਕਿ ਸੱਤਾ 'ਚ ਆਏ ਵਿਗਾੜਾਂ ਨੇ ਹਰੇਕ ਪੱਧਰ 'ਤੇ ਪ੍ਰਭਾਵਿਤ ਕੀਤਾ ਹੈ ਤੇ ਨਿਆਂ-ਪਾਲਿਕਾ ਵੀ ਇਸ ਤੋਂ ਬੇਲਾਗ ਨਹੀਂ ਰਹੀ। ਉਨ੍ਹਾਂ ਕਿਹਾ ਕਿ ਹਾਈ ਕੋਰਟ ਦੇ ਜੱਜਾਂ ਦੀਆਂ ਬਦਲੀਆਂ ਨਾਲ ਇਸ ਨੂੰ ਕਾਫੀ ਧੱਕਾ ਲੱਗਾ ਹੈ। ਉਨ੍ਹਾਂ ਕਿਹਾ ਕਿ ਜੱਜਾਂ ਦੀਆਂ ਬਦਲੀਆਂ ਉਨ੍ਹਾਂ ਦੀ ਸਹਿਮਤੀ ਦੇ ਬਿਨਾਂ ਨਹੀਂ ਹੋਣੀਆਂ ਚਾਹੀਦੀਆਂ।

ਪੰਜਾਬੀ ਯੂਨੀਵਰਸਿਟੀ ਪਟਿਆਲਾ ਦੇ ਰਾਜਨੀਤੀ ਸ਼ਾਸਤਰ ਵਿਭਾਗ ਦੇ ਪ੍ਰੋਫੈਸਰ ਰਾਵਿੰਦਰ ਨਾਥ ਪਾਲ ਨੇ ਸੈਮੀਨਾਰ 'ਚ ਆਪਣਾ ਕੁੰਜੀਵਤ

(ਬਾਕੀ ਸਫਾ 8 ਕਾਲਮ 7)

ਧਾਰਾ 356 ਨੂੰ ਸੰਵਿਧਾਨ 'ਚ ਰੱਖਣ ਦੀ ਲੋੜ ਨਹੀਂ

(ਸਫਾ 1 ਕਾਲਮ 6 ਦੀ ਬਾਕੀ)

ਭਾਸ਼ਣ ਦਿੰਦਿਆਂ ਕਿਹਾ ਕਿ ਸੰਵਿਧਾਨ ਵਿਚ ਹੁਣ ਤਕ 83 ਤੋਂ ਵੱਧ ਸੋਧਾਂ ਕੀਤੀਆਂ ਜਾ ਚੁੱਕੀਆਂ ਹਨ ਤੇ ਵਾਰ-ਵਾਰ ਸੋਧਾਂ ਕਰਨ ਨਾਲੋਂ ਇਕੋ ਵਾਰ ਹੀ ਇਸ ਦਾ ਮੁਲਾਂਕਣ ਕਰ ਲੈਣਾ ਜ਼ਿਆਦਾ ਸਹੀ ਹੈ। ਉਨ੍ਹਾਂ ਮਰਹੂਮ ਪ੍ਰਧਾਨ ਮੰਤਰੀ ਰਾਜੀਵ ਗਾਂਧੀ ਦਾ ਹਵਾਲਾ ਦਿੰਦਿਆਂ ਕਿਹਾ ਕਿ ਉਹ ਹਰ ਪੰਜ ਸਾਲ ਬਾਅਦ ਸੰਵਿਧਾਨ ਦਾ ਮੁਲਾਂਕਣ ਕਰਨਾ ਚਾਹੁੰਦੇ ਸਨ।

ਸੰਵਿਧਾਨ ਦੀ ਸਮੀਖਿਆ ਬਾਰੇ ਕਮਿਸ਼ਨ ਨੂੰ ਜਾਇਜ਼ ਠਹਿਰਾਉਂਦਿਆਂ ਉਨ੍ਹਾਂ ਕਿਹਾ ਕਿ ਸੱਤਾ ਦੇ ਨਾਲ ਜੁਆਬਦੇਹੀ ਅਤੇ ਅਧਿਕਾਰਾਂ ਨਾਲ ਜ਼ਿੰਮੇਵਾਰੀਆਂ ਵੀ ਹੋਣੀਆਂ ਚਾਹੀਦੀਆਂ ਹਨ ਪਰ ਸਾਡਾ ਮੌਜੂਦਾ ਸੰਵਿਧਾਨ ਇਸ ਦੀ ਗਾਰੰਟੀ ਨਹੀਂ ਕਰਦਾ। ਇਸ ਲਈ ਸੰਵਿਧਾਨ ਦੀ ਸਮੀਖਿਆ ਕਰਦੇ ਸਮੇਂ ਇਸ ਗੱਲ ਨੂੰ ਧਿਆਨ 'ਚ ਰੱਖਿਆ ਜਾਣਾ ਚਾਹੀਦਾ ਹੈ। ਉਨ੍ਹਾਂ ਕਿਹਾ ਕਿ ਰਾਜਾਂ ਨੂੰ ਵੱਧ ਅਧਿਕਾਰ ਦੇਣ ਲਈ ਸਰਕਾਰੀਆ ਕਮਿਸ਼ਨ ਬਣਾਇਆ ਗਿਆ ਸੀ। ਇਸ ਨੇ ਕਾਫੀ ਅਰਸਾ ਪਹਿਲਾਂ ਆਪਣੀ ਰਿਪੋਰਟ ਦੇ ਦਿੱਤੀ ਸੀ ਤੇ ਰਾਜਾਂ ਨੂੰ ਵੱਧ ਅਧਿਕਾਰ ਦੇਣ ਲਈ ਇਸ ਰਿਪੋਰਟ ਨੂੰ ਆਧਾਰ ਬਣਾਇਆ ਜਾਣਾ ਚਾਹੀਦਾ ਹੈ।

ਕਰਿਡ ਦੇ ਡਾਇਰੈਕਟਰ ਯਸ਼ਪਾਲ ਮਲਹੋਤਰਾ ਨੇ ਸਮਾਗਮ ਦੇ ਮੁੱਖ ਮਹਿਮਾਨ ਤੇ ਡੈਲੀਗੇਟਾਂ ਦਾ ਸੁਆਗਤ ਕਰਦਿਆਂ ਕਿਹਾ ਕਿ ਕੋਈ ਵੀ ਮੁੱਦਾ ਜਾਂ ਵਿਚਾਰ ਉਸ ਸਮੇਂ ਵੱਧ ਸਾਰਥਕ ਹੋ ਨਿਬੜਦਾ ਹੈ, ਜਦੋਂ ਉਸ ਨੂੰ ਬਦਲ ਰਹੀ ਸਥਿਤੀ ਦੇ ਸੰਦਰਭ ਵਿਚ ਵਾਚਿਆ ਜਾਵੇ। ਇਹੀ ਗੱਲ ਭਾਰਤ ਦੇ ਸੰਵਿਧਾਨ 'ਤੇ ਲਾਗੂ ਹੁੰਦੀ ਹੈ। ਉਨ੍ਹਾਂ ਕਿਹਾ ਕਿ ਸੰਵਿਧਾਨ ਦੀ ਸਮੀਖਿਆ ਕਮਿਸ਼ਨ ਬਣਾਉਣ ਬਾਰੇ ਵੱਖ-ਵੱਖ ਵਿਚਾਰ ਹਨ ਤੇ ਸੈਮੀਨਾਰ ਦੌਰਾਨ ਸਥਿਤੀ ਕਾਫੀ ਸਪਸ਼ਟ ਹੋ ਜਾਵੇਗੀ।

ਹਿਮਾਚਲ ਪ੍ਰਦੇਸ਼ ਯੂਨੀਵਰਸਿਟੀ ਦੇ ਡਾ. ਰਨਧੀਰ ਸ਼ਰਮਾ, ਪ੍ਰੋਫੈਸਰ ਵਿਦਿਆ ਭੂਸ਼ਨ, ਪ੍ਰੋ. ਐਮ.ਪੀ. ਸਿੰਘ, ਡਾ. ਰਮੇਸ਼ ਮਦਾਨ, ਡਾ. ਐਸ.ਐਸ. ਟੀਵਾਣਾ, ਡਾ. ਆਰ.ਕੇ. ਗੁਪਤਾ, ਸ੍ਰੀ ਟੀ.ਕੇ.ਏ. ਨਾਇਰ, ਡਾ. ਪੀ.ਵੀ. ਦੂਬੇ ਆਦਿ ਨੇ ਆਪਣੇ ਵਿਚਾਰ ਪੇਸ਼ ਕੀਤੇ।

"Punjabi Tribune"
August 28, 2000

ਕਰਿੰਡ ਵਲੋਂ ਐਤਵਾਰ ਨੂੰ ਚੰਡੀਗੜ੍ਹ ਵਿਚ ਭਾਰਤੀ ਸੰਵਿਧਾਨ ਦੇ ਜਾਇਜ਼ੇ ਬਾਰੇ ਕਰਾਏ ਗਏ ਇਕ ਸੈਮੀਨਾਰ ਵਿਚ ਸ਼ਾਮਲ ਵਿਦਵਾਨ। (ਫੋਟੋ: ਪੰਕਜ ਸ਼ਰਮਾ)

ਚੁੱਕਾ ਹੈ, ਨਾਲ ਸ਼ਹਿਰ 'ਚ ਪਹਿਲਾਂ ਹੀ ਹੁਸੈਨ ਸਾਗਰ ਦੇ ਪਏ ਪਾੜ ਦੀ ਤਬਾਹੀ 'ਚ ਹੋਰ ਵੀ ਵਾਧਾ ਹੋਣ ਦੀ ਸੰਭਾਵਨਾ ਹੈ। ਫਿਰ ਵੀ ਸੈਨਾ ਦੇ ਇੰਜੀਨੀਅਰ

ਵੀਰੱਪਨ ਦੀ ਮੰਗ 'ਤੇ 5 ਕਰੋੜ ਰੁਪਏ ਰਾਖਵੇਂ ਕਰਨ ਦੇ ਆਦੇਸ਼

ਚੇਨਈ, 27 ਅਗਸਤ (ਯੂ. ਐਨ. ਆਈ.)- ਵੀਰੱਪਨ ਦੀਆਂ ਦੋ ਮੁੱਖ ਮੰਗਾਂ ਵਿਚੋਂ ਇਕ ਨੂੰ ਮੰਨਦਿਆਂ ਤਾਮਿਲਨਾਡੂ ਸਰਕਾਰ ਨੇ ਵਿਸ਼ੇਸ਼ ਟਾਕਸ ਫੋਰਸ ਦੀਆਂ ਵਧੀਕੀਆਂ ਦੇ ਸ਼ਿਕਾਰ ਲੋਕਾਂ ਲਈ 5 ਕਰੋੜ ਰੁਪਏ ਰਾਖਵੇਂ ਕਰਨ ਦੇ ਆਦੇਸ਼ ਦੇ ਦਿੱਤੇ ਹਨ। ਦੂਜੇ ਪਾਸੇ ਸਰਕਾਰੀ ਏਲਚੀ ਸ੍ਰੀ ਆਰ. ਆਰ ਗੋਪਾਲ ਤੀਜੀ ਵਾਰ ਜੰਗਲ ਵਿਚ ਜਾਣ ਲਈ ਤਿਆਰ ਹਨ। ਵੀਰੱਪਨ ਨੇ ਕੰਨੜ ਫਿਲਮਾਂ ਦੇ ਪ੍ਰਸਿੱਧ ਅਦਾਕਾਰ ਡਾ. ਰਾਜ ਕੁਮਾਰ ਅਤੇ ਤਿੰਨ ਹੋਰਨਾਂ ਨੂੰ ਕਰੀਬ ਇਕ ਮਹੀਨਾ ਪਹਿਲਾਂ ਅਗਵਾ ਕਰ ਲਿਆ ਸੀ। ਸਰਕਾਰੀ ਏਲਚੀ ਸ੍ਰੀ ਗੋਪਾਲ ਨੇ ਜਦੋਂ ਉਹਦੇ (ਬਾਕੀ ਸਫਾ 8 ਕਾਲਮ 7)

ਧਾਰਾ 356 ਨੂੰ ਸੰਵਿਧਾਨ 'ਚ ਰੱਖਣ ਦੀ ਲੋੜ ਨਹੀਂ: ਸੱਚਰ

ਚੰਡੀਗੜ੍ਹ, 27 ਅਗਸਤ (ਬਲਵਿੰਦਰ ਜੰਮੂ)- 'ਹਰੇਕ ਪਾਰਟੀ ਨੇ ਸੰਵਿਧਾਨ ਦੀ ਧਾਰਾ 356 ਦੀ ਦੁਰਵਰਤੋਂ ਕੀਤੀ ਹੈ। ਇਸ ਧਾਰਾ ਨੂੰ ਸੰਵਿਧਾਨ 'ਚ ਕਾਇਮ ਰੱਖਣ ਦੀ ਕੋਈ ਲੋੜ ਨਹੀਂ ਹੈ। ਜੇ ਇਸ ਧਾਰਾ ਨੂੰ ਬਰਕਰਾਰ ਰੱਖਿਆ ਗਿਆ ਤਾਂ ਭਵਿੱਖ ਵਿਚ ਇਸ ਦੀ ਦੁਰਵਰਤੋਂ ਦੀ ਸੰਭਾਵਨਾ ਬਣੀ ਰਹੇਗੀ। ਇਸ ਲਈ ਇਸ ਧਾਰਾ ਨੂੰ ਖਤਮ ਕਰ ਦਿੱਤਾ ਜਾਵੇ।'

ਇਹ ਵਿਚਾਰ ਦਿੱਲੀ ਹਾਈ ਕੋਰਟ ਦੇ ਸਾਬਕਾ ਚੀਫ ਜਸਟਿਸ ਸ੍ਰੀ ਰਾਜਿੰਦਰ ਸੱਚਰ ਨੇ 'ਭਾਰਤੀ ਸੰਵਿਧਾਨ ਇਕ ਮੁਲਾਂਕਣ' ਵਿਸ਼ੇ ਬਾਰੇ ਕਰਿਡ ਵਲੋਂ ਕਰਵਾਏ ਜਾ ਰਹੇ ਦੋ-ਰੋਜ਼ਾ ਸੈਮੀਨਾਰ ਦੇ ਉਦਘਾਟਨੀ ਭਾਸ਼ਣ 'ਚ ਅੱਜ ਕਹੇ। ਉਨ੍ਹਾਂ ਕਿਹਾ ਕਿ ਕੋਈ ਜ਼ਮਾਨਾ ਸੀ ਜਦੋਂ ਕੌਮੀ ਆਗੂ ਹੁੰਦੇ ਸਨ। ਅੱਜ ਪ੍ਰਧਾਨ ਮੰਤਰੀ ਸ੍ਰੀ ਅਟਲ ਬਿਹਾਰੀ ਵਾਜਪਾਈ ਨੂੰ ਛੱਡ ਕੇ ਹੋਰ ਕੋਈ ਆਗੂ ਕੌਮੀ ਕੱਦ ਵਾਲਾ ਨਹੀਂ ਹੈ। ਕੇਂਦਰ ਸਰਕਾਰ 'ਚ ਸ਼ਾਮਲ ਲਗਪਗ ਸਾਰੇ ਆਗੂ ਸੂਬਾਈ ਹਨ। ਉਨ੍ਹਾਂ ਆਪਣੀ ਗੱਲ ਸਪਸ਼ਟ ਕਰਦਿਆਂ ਕਿਹਾ ਕਿ ਜੇ ਸੂਬਾਈ ਆਗੂ ਕੇਂਦਰ 'ਚ ਵਜ਼ੀਰ ਬਣ ਕੇ ਕੇਂਦਰ ਸਰਕਾਰ ਨੂੰ ਠੀਕ ਢੰਗ ਨਾਲ ਚਲਾ ਸਕਦੇ ਹਨ ਤਾਂ ਸੂਬਾਈ ਸਰਕਾਰਾਂ ਚਲਾਉਣਾ ਇਨ੍ਹਾਂ ਲਈ ਕੋਈ ਔਖਾ ਕੰਮ ਨਹੀਂ ਹੈ। ਜੇ ਕੋਈ ਸੂਬਾਈ ਸਰਕਾਰ ਦੇਸ਼ ਦੀ ਏਕਤਾ ਤੇ ਅਖੰਡਤਾ ਲਈ ਖਤਰਾ ਪੇਸ਼ ਕਰੇ ਤਾਂ ਕੇਂਦਰੀ ਸੁਰੱਖਿਆ ਬਲ ਭੇਜ ਕੇ ਖਤਰੇ ਨਾਲ ਨਿਪਟਿਆ ਜਾ ਸਕਦਾ ਹੈ। ਇਸ ਲਈ ਧਾਰਾ 356 ਨੂੰ ਰੱਖਣ ਦੀ ਕੋਈ ਤੁਕ ਨਹੀਂ ਹੈ।

ਦੇਸ਼ ਦੀ ਜਮਹੂਰੀ ਪ੍ਰਣਾਲੀ ਦੀ ਚਰਚਾ ਕਰਦਿਆਂ ਉਨ੍ਹਾਂ ਇਸ ਤਜਵੀਜ਼ ਦਾ ਵਿਰੋਧ ਕੀਤਾ ਕਿ ਜੇ ਕਿਸੇ ਪਾਰਟੀ ਨੂੰ ਪੰਜ ਫੀਸਦੀ ਵੋਟਾਂ ਨਹੀਂ ਮਿਲਦੀਆਂ ਤਾਂ ਉਸ ਦੀ ਮਾਨਤਾ ਰੱਦ ਕਰ ਦਿੱਤੀ ਜਾਵੇ। ਉਨ੍ਹਾਂ ਕਿਹਾ ਕਿ ਜੇ ਅਜਿਹਾ ਕੀਤਾ ਤਾਂ ਇਸ ਨਾਲ ਬਹੁ-ਪਾਰਟੀ ਪ੍ਰਣਾਲੀ ਖਤਮ ਹੋ ਜਾਵੇਗੀ ਤੇ ਦੋ-ਪਾਰਟੀ ਪ੍ਰਣਾਲੀ ਲਈ ਰਾਹ ਪੱਧਰਾ ਹੋ ਜਾਵੇਗਾ। ਉਨ੍ਹਾਂ ਕਿਹਾ ਕਿ ਸਾਡੇ ਦੇਸ਼ ਲਈ ਬਹੁ-ਪਾਰਟੀ ਪ੍ਰਣਾਲੀ ਹੀ ਸਹੀ ਹੈ ਤੇ ਇਸ ਨੂੰ ਬਹਾਲ ਰੱਖਣ ਦੀ ਲੋੜ ਹੈ।

ਸੰਵਿਧਾਨ ਦੀ ਸਮੀਖਿਆ ਸਬੰਧੀ ਬਣਾਏ ਕਮਿਸ਼ਨ ਬਾਰੇ ਉਨ੍ਹਾਂ ਕਿਹਾ ਕਿ ਭਾਜਪਾ ਜਿਸ ਮਸਲੇ ਬਾਰੇ ਸਿੱਧੇ ਤੌਰ 'ਤੇ ਬਹਿਸ ਨਹੀਂ ਸੀ ਕਰਵਾ ਸਕਦੀ, ਇਸ ਨੇ ਇਹ ਗੱਲ ਕੌਮੀ ਜਮਹੂਰੀ ਗਠਜੋੜ ਰਾਹੀਂ ਕਰਵਾ ਕੇ ਖਤਰਨਾਕ ਖੇਡ ਖੇਡਣੀ ਸ਼ੁਰੂ ਕਰ ਦਿੱਤੀ ਹੈ। ਬਹਿਸ ਸ਼ੁਰੂ ਕਰਾਉਣ ਪਿੱਛੇ ਇਸ ਦਾ ਮੰਤਵ ਕੁਝ ਹੋਰ ਹੈ। ਉਨ੍ਹਾਂ ਕਿਹਾ ਕਿ ਕਮਿਸ਼ਨ ਬਣਾਉਣ ਤੋਂ ਪਹਿਲਾਂ ਇਸ ਬਾਰੇ ਸੰਸਦ 'ਚ ਬਹਿਸ ਹੋਣੀ ਚਾਹੀਦੀ ਸੀ।

ਜਸਟਿਸ ਸੱਚਰ ਨੇ ਲਾਲਾ ਲਾਜਪਤ ਰਾਏ ਤੇ ਸ਼ਹੀਦ ਭਗਤ ਸਿੰਘ ਨੂੰ ਸ਼ਹੀਦ ਨਾ ਮੰਨਣ ਬਾਰੇ ਕੁਝ ਧਿਰਾਂ ਵਲੋਂ ਕੀਤੇ ਜਾ ਰਹੇ ਕਿੰਤੂ ਪ੍ਰੰਤੂ 'ਤੇ ਸਖ਼ਤ ਇਤਰਾਜ਼ ਕਰਦਿਆਂ ਕਿਹਾ ਕਿ ਇਹ ਧਿਰਾਂ ਪੰਜਾਬ ਦੀ ਵਿਰਾਸਤ ਨੂੰ ਤਬਾਹ ਕਰਨਾ ਚਾਹੁੰਦੀਆਂ ਹਨ। ਉਨ੍ਹਾਂ ਕਿਹਾ ਕਿ ਇਨ੍ਹਾਂ ਦੋਵਾਂ ਆਗੂਆਂ ਨੇ ਦੇਸ਼ ਦੀ ਆਜ਼ਾਦੀ ਲਈ ਆਪਣੀਆਂ ਜਾਨਾਂ ਨਿਛਾਵਰ ਕੀਤੀਆਂ ਹਨ ਤੇ ਇਨ੍ਹਾਂ ਬਾਰੇ ਅਜਿਹੀ ਟਿੱਪਣੀ ਕਰਨਾ ਮੁਕੰਮਲ ਤੌਰ 'ਤੇ ਗੁੰਮਰਾਹਕੁਨ ਹੈ।

ਉਨ੍ਹਾਂ ਕਿਹਾ ਕਿ ਸੱਤਾ 'ਚ ਆਏ ਵਿਗਾੜਾਂ ਨੇ ਹਰੇਕ ਪੱਧਰ 'ਤੇ ਪ੍ਰਭਾਵਿਤ ਕੀਤਾ ਹੈ ਤੇ ਨਿਆਂ-ਪਾਲਿਕਾ ਵੀ ਇਸ ਤੋਂ ਬੇਲਾਗ ਨਹੀਂ ਰਹੀ। ਉਨ੍ਹਾਂ ਕਿਹਾ ਕਿ ਹਾਈ ਕੋਰਟ ਦੇ ਜੱਜਾਂ ਦੀਆਂ ਬਦਲੀਆਂ ਨਾਲ ਇਸ ਨੂੰ ਕਾਫੀ ਧੱਕਾ ਲੱਗਾ ਹੈ। ਉਨ੍ਹਾਂ ਕਿਹਾ ਕਿ ਜੱਜਾਂ ਦੀਆਂ ਬਦਲੀਆਂ ਉਨ੍ਹਾਂ ਦੀ ਸਹਿਮਤੀ ਦੇ ਬਿਨਾਂ ਨਹੀਂ ਹੋਣੀਆਂ ਚਾਹੀਦੀਆਂ।

ਪੰਜਾਬੀ ਯੂਨੀਵਰਸਿਟੀ ਪਟਿਆਲਾ ਦੇ ਰਾਜਨੀਤੀ ਸ਼ਾਸਤਰ ਵਿਭਾਗ ਦੇ ਪ੍ਰੋਫੈਸਰ ਰਾਵਿੰਦਰ ਨਾਥ ਪਾਲ ਨੇ ਸੈਮੀਨਾਰ 'ਚ ਆਪਣਾ ਕੁੰਜੀਵਤ
(ਬਾਕੀ ਸਫਾ 8 ਕਾਲਮ 7)

ਧਾਰਾ 356 ਨੂੰ ਸੰਵਿਧਾਨ 'ਚ ਰੱਖਣ ਦੀ ਲੋੜ ਨਹੀਂ

(ਸਫਾ 1 ਕਾਲਮ 6 ਦੀ ਬਾਕੀ)

ਭਾਸ਼ਣ ਦਿੰਦਿਆਂ ਕਿਹਾ ਕਿ ਸੰਵਿਧਾਨ ਵਿਚ ਹੁਣ ਤਕ 83 ਤੋਂ ਵੱਧ ਸੋਧਾਂ ਕੀਤੀਆਂ ਜਾ ਚੁੱਕੀਆਂ ਹਨ ਤੇ ਵਾਰ-ਵਾਰ ਸੋਧਾਂ ਕਰਨ ਨਾਲੋਂ ਇਕੋ ਵਾਰ ਹੀ ਇਸ ਦਾ ਮੁਲਾਂਕਣ ਕਰ ਲੈਣਾ ਜ਼ਿਆਦਾ ਸਹੀ ਹੈ। ਉਨ੍ਹਾਂ ਮਰਹੂਮ ਪ੍ਰਧਾਨ ਮੰਤਰੀ ਰਾਜੀਵ ਗਾਂਧੀ ਦਾ ਹਵਾਲਾ ਦਿੰਦਿਆਂ ਕਿਹਾ ਕਿ ਉਹ ਹਰ ਪੰਜ ਸਾਲ ਬਾਅਦ ਸੰਵਿਧਾਨ ਦਾ ਮੁਲਾਂਕਣ ਕਰਨਾ ਚਾਹੁੰਦੇ ਸਨ।

ਸੰਵਿਧਾਨ ਦੀ ਸਮੀਖਿਆ ਬਾਰੇ ਕਮਿਸ਼ਨ ਨੂੰ ਜਾਇਜ਼ ਠਹਿਰਾਉਂਦਿਆਂ ਉਨ੍ਹਾਂ ਕਿਹਾ ਕਿ ਸੱਤਾ ਦੇ ਨਾਲ ਜੁਆਬਦੇਹੀ ਅਤੇ ਅਧਿਕਾਰਾਂ ਨਾਲ ਜ਼ਿੰਮੇਵਾਰੀਆਂ ਵੀ ਹੋਣੀਆਂ ਚਾਹੀਦੀਆਂ ਹਨ ਪਰ ਸਾਡਾ ਮੌਜੂਦਾ ਸੰਵਿਧਾਨ ਇਸ ਦੀ ਗਾਰੰਟੀ ਨਹੀਂ ਕਰਦਾ। ਇਸ ਲਈ ਸੰਵਿਧਾਨ ਦੀ ਸਮੀਖਿਆ ਕਰਦੇ ਸਮੇਂ ਇਸ ਗੱਲ ਨੂੰ ਧਿਆਨ 'ਚ ਰੱਖਿਆ ਜਾਣਾ ਚਾਹੀਦਾ ਹੈ। ਉਨ੍ਹਾਂ ਕਿਹਾ ਕਿ ਰਾਜਾਂ ਨੂੰ ਵੱਧ ਅਧਿਕਾਰ ਦੇਣ ਲਈ ਸਰਕਾਰੀਆ ਕਮਿਸ਼ਨ ਬਣਾਇਆ ਗਿਆ ਸੀ। ਇਸ ਨੇ ਕਾਫੀ ਅਰਸਾ ਪਹਿਲਾਂ ਆਪਣੀ ਰਿਪੋਰਟ ਦੇ ਦਿੱਤੀ ਸੀ ਤੇ ਰਾਜਾਂ ਨੂੰ ਵੱਧ ਅਧਿਕਾਰ ਦੇਣ ਲਈ ਇਸ ਰਿਪੋਰਟ ਨੂੰ ਆਧਾਰ ਬਣਾਇਆ ਜਾਣਾ ਚਾਹੀਦਾ ਹੈ।

ਕਰਿਡ ਦੇ ਡਾਇਰੈਕਟਰ ਯਸ਼ਪਾਲ ਮਲਹੋਤਰਾ ਨੇ ਸਮਾਗਮ ਦੇ ਮੁੱਖ ਮਹਿਮਾਨ ਤੇ ਡੈਲੀਗੇਟਾਂ ਦਾ ਸੁਆਗਤ ਕਰਦਿਆਂ ਕਿਹਾ ਕਿ ਕੋਈ ਵੀ ਮੁੱਦਾ ਜਾਂ ਵਿਚਾਰ ਉਸ ਸਮੇਂ ਵੱਧ ਸਾਰਥਕ ਹੋ ਨਿਬੜਦਾ ਹੈ, ਜਦੋਂ ਉਸ ਨੂੰ ਬਦਲ ਰਹੀ ਸਥਿਤੀ ਦੇ ਸੰਦਰਭ ਵਿਚ ਵਾਚਿਆ ਜਾਵੇ। ਇਹੀ ਗੱਲ ਭਾਰਤ ਦੇ ਸੰਵਿਧਾਨ 'ਤੇ ਲਾਗੂ ਹੁੰਦੀ ਹੈ। ਉਨ੍ਹਾਂ ਕਿਹਾ ਕਿ ਸੰਵਿਧਾਨ ਦੀ ਸਮੀਖਿਆ ਕਮਿਸ਼ਨ ਬਣਾਉਣ ਬਾਰੇ ਵੱਖ-ਵੱਖ ਵਿਚਾਰ ਹਨ ਤੇ ਸੈਮੀਨਾਰ ਦੌਰਾਨ ਸਥਿਤੀ ਕਾਫੀ ਸਪਸ਼ਟ ਹੋ ਜਾਵੇਗੀ।

ਹਿਮਾਚਲ ਪ੍ਰਦੇਸ਼ ਯੂਨੀਵਰਸਿਟੀ ਦੇ ਡਾ. ਰਣਧੀਰ ਸ਼ਰਮਾ, ਪ੍ਰੋਫੈਸਰ ਵਿਦਿਆ ਭੂਸ਼ਨ, ਪ੍ਰੋ. ਐਮ. ਪੀ. ਸਿੰਘ, ਡਾ. ਰਮੇਸ਼ ਮਦਾਨ, ਡਾ. ਐਸ ਐਸ. ਟਿਵਾਣਾ, ਡਾ. ਆਰ ਕੇ. ਗੁਪਤਾ, ਸ੍ਰੀ ਟੀ. ਕੇ. ਏ. ਨਾਇਰ, ਡਾ. ਪੀ. ਵੀ. ਦੂਬੇ ਆਦਿ ਨੇ ਆਪਣੇ ਵਿਚਾਰ ਪੇਸ਼ ਕੀਤੇ।

(11)

REVIEW OF THE CONSTITUTION : A DEMAND FOR JUST, FAIR AND EQUITABLE DEVOLUTION OF RESOURCES AND REMOVAL OF LINKED IRRITANTS

V. P. Dubey
CRRID

Need for precision and a word of caution

The Constitution of a country being the most sacred document, should be amended, with a great degree of caution, as the raising of a mass hysteria against some of its basic provisions, which can not be amended (or are difficult to be amended by the Government in office) can be counter productive, hence there is need to be very precise in what we want from the review commission.

The demand has to be provision specific, and not vaguely worded for making an appeal to the vote bank, so that all failures could be attributed to provisions of the constitution. Such attempts to locate an alibi need to be discouraged.

The word Autonomy has been used with different connotations by different Advocates, hence those who talk of autonomy should be asked to indicate as to what they mean by the word autonomy.

Some people advocate incorporation of the word "federal" in the preamble. But as the preamble plays key role in the interpretation of the constitution, hence it is apprehended that its incorporation would result in creating complications in the working of the constitution. The entire fabric of our constitution is quasi federal with unitary features and literal interpretation of the words is strictly literal.

Parliamentary system of Government, Fundamental Rights and Judicial structure etc., cannot be amended because of their being Basic to the structure of the Constitution.

Despite all this, there is tremendous scope for review of the various provisions in the constitution.

All administrative decisions derive their legal validity from the legislative provisions, and Rule making authority flowing from such Legislative authority.

The Legislative authority of the Centre as well as of the states flow from the Distribution of Legislative powers. Taxation Powers also flow from the Legislative lists.

The Legislative powers are distributed through List I, List II and List III, also called the Union List, Concurrent List, and the State list respectively.

For our purpose, a review of union List and Concurrent List is called for.

A demand has been raised that union List be reduced to External Affairs, Defence and Communications.

It is true that Cabinet Mission Plan of Lord Wavell did envisage the giving of only three powers to the centre, because Muslim League was opposed to the giving of more powers to the central Government, because of its well known and declared policy, that the Centre was to be governed by the Majority Community, and Muslims were prepared to live in a United India, only if only Three subjects were given to the Centre. Nehru and Patel knew that partitioned India faced the following dangers i.e.

Vulnerability of its northern frontier to external aggression, dangers to its territorial integrity from a divided army formed on religious basis and Pakistan getting involved in Cold war. Against these, the choice was United India, with a Weak Centre.

Both of them realised, that a weak centre would lead to disintegration, and history would repeat itself. Therefore, they opted for a partitioned India with a strong centre.

History is replete with examples, that whenever the Units in India became very strong, there was challenge to the Central authority. Thus states fought amongst themselves, invited foreigners and this paved the way for foreign rule. Even as late as 1947, the native states, ruled by some Indian rulers posed a serious challenge to Sardar Patel's efforts to Unite India

and it was the realization by these rulers, that the centre was sufficiently strong to curb, their anti Indian feelings that forced these rulers to accede to the Indian Union. Hyderabad, Junagarh etc. actually faced central strength. Thus, if India of 1947 could not think of a weak Centre, we should curb all demands, which have, even the remotest possibility of weakening the Centre.

Unjust Devolution of Resources

All this, however does not mean, that 50 years of working of this constitution have not highlighted any infirmities, weaknesses and contradictions. Though, we talks of a strong centre, with strong states, the distribution of legislative powers, and certain other provisions in the constitution have reduced the states to the status of ordinary Municipalities. It is an admitted fact, that major sources of Revenue have been retained by the Centre, and the states have been left with meagre resources like sale tax, excise from Liquor, Land Revenue etc.

The share in the divisible pool is given to the states on recommendation of a Finance Commission, which has been influenced considerably by the states having the largest chunk of M.Ps in Parliament i.e BIMARU region of the country. This is true of even the Eleventh Finance Commission whose recommendations reducing the share of progressive states at the cost of poor states are being challenged. These states have remained poor, because of high growth rate of population, and a very low rate of economic growth. They have remained poor even when they got more out of central pool of divisible resources, because of Administrative inefficiency, corruption, caste ridden politics, and lack of vision of the politicians, who remained in authority in these states.

The states, showing better performance were punished while states showing poor performance were rewarded. The denial of resources, was exploited by politicians claiming injustice on ethnic diversities, linguistic and religious minorities as denial of equality in treatment to such ethnicities or minorities:-

This ploy has paid rich dividends to such politicians and the parties to which they belonged. This denial of resources to the states was a major factor of friction in central state relations.

President's Rule in States

The situation was further complicated, because the central authority used this provision for their political purposes, thereby damaging the permanent interests of the nation.

The framers of the Indian constitution did not provide for central rule at the centre, even if a situation similar to the one, envisaged under Article 356, existed at the centre. In the case of the centre. it was envisaged, that safety mechanism, was Parliamentary Rule, and provision for dissolution of Lok Sabha followed by fresh election's, but in the case of states it was envisaged that, when a situation arose, as it was envisaged in the relevant provision of the constitution, the President (with or without a report from the Governor) could impose what is called "Presidential Rule" but in fact is to rule by the party in power at the centre. When Non Congress Government came into power at the state level, and the Congress Government at the Centre tried to exercise this authority arbitrarily, the states felt that such a flagrant abuse of power posed a serious threat to the quasi federal nature of the Constitution. The exercise of power under this Article was challenged in the Supreme Court, and the law laid down by the Supreme Court has removed the irritant. Today, even when N.D.A govt, wanted to dismiss Rabri Devi Govt in Bihar, it failed to do so, because the Rajya Sabha refused to accord approval.

This judgement has therefore provided an in-built safety mechanism, against misuse of central authority under this Article. However a situation can arise, where the Central Govt, with the approval of Parliament, may have to impose Central Rule in the State. Such a measure may be counter productive and result in a serious constitutional crisis. The deletion of this Article is therefore not advisable.

The President in Parliament is the best judge of the situation and he has to be satisfied. This is the first safety mechanism Parliamentary approval is the second one and then the Supreme Court as the apex judicial authority to adjudicate upon any legal issue raised by the parties in this behalf is the third safety mechanism. Let those who speak for amendment come out with a specific provision as to what do they actually want.

Regarding Planning - Unjust Mechanism

In the Name of its Planning power, centre has completely crippled states of their autonomy. The centre has usurped the power of the state Govt. to carry out any developmental activity without clearance from the Planning Commission. For example Sugar production may be in the state list, but if the state govts. want to establish a sugar mill, it must seek clearance from the central government. As the State Governments are always short of resources, they have to seek loans and Grants from the centre, so they have to visit central ministries and Planning Commission. Their position has in reality been reduced to that of beggar.

There is need for review of Centre state relation so far as these pertain to the exercise of authority by the state, under the State list, where such state Govt. has exclusive power.

In case, the centre feels that a situation has been created when centre has to exercise power, then it should go to the Parliament and makes law as provided in the Constitution (Art.249) for exercising Legislative power under State List. So far as Concurrent List in concerned, the Centre should realise, that the state should be given maximum autonomy to legislate upon this field of legislative activity as well, and intervene only in cases of necessity and emergency.

In a Quasi federal structure with unitary feature, there is need for building "Conventions" not to be reduced to the rigidifies of a written language, where states should have the feeling that the broad Constitutional frame work", gives them ''Not only a even playing field", but rather encourages the units to fulfil the aspirations of the local people in the manner, the locals feel the best. Being closer to them, they know their pulse better than the powers that be in Delhi.

The Union list includes external affairs, defence, communications and certain entries appear to have been included because of historical exigencies (i.e as a Successor Govt.), to raise financial resources for exercising the power & subjects included in the Union List to exercise powers in public Interest, as the final safety valve in the constitutional mechanism.

There are however entries like, 40,55,58,6063,66,81,84, 85,86,90,91 and 92. These entries are worth examination and being brought on the concurrent list, if the Union does not have concrete grounds against them being brought down i.e included in concurrent list. Similarly the state should prepare solid case, as to how this shift, will help the units in translating their dreams of states prosperity.

Similarly, there are powers included in the concurrent list which are needed for strengthening internal security, law and order and coordination among centre and states and ensure smooth relationship between the two tiers of government. However, Art 17A, 20A, 25, 28, 33 and 35, could be examined afresh to see, if any change is justified.

Planning, Higher Education and Forests were included to ensure smooth and orderly economic growth. Having adopted the Mahalnobi's Model of Economic Growth through Planning, the incorporation of this entry in the concurrent list had become a necessity. It has to be seen, if under the new economic policy, a change in the Centre's role has become necessary or not and, if change is justified, what changes should be made and how such changes are going to be implemented.

Forests which play a pivotal role in maintaining the environment, soil-health etc. have a long history of being included in the centre's sphere of activities. States have played havoc with forest wealth and a regulatory and safety mechanism is needed for the survival of forests. These Forests being put on the concurrent list is a sound policy and should not be tinkered with. Similarly, education at the higher level is an important area of Human Resource Development. Universities need mechanism like, UGC and other central councils/agencies etc. for growth and inclusion of this subject in the concurrent list is fully justified.

But one is surprised at the creation of Ministry of Rural Development, Ministry of Agriculture, Ministry of Urban Development, etc. because their jurisdiction extends over areas included in the State List. In fact, these ministries are, for the distribution of resources available with the Centre and which the states need for their development. Thus, states more willing to accept the central control in the name of planned growth of their respective

areas, have acquiesced in the exercise of the jurisdiction. Despite this the situation remains explosive. No doubt, thousands of crores are being wasted on this duplicate spending, with no net gain in improving the quality of life in these areas.

Role of All India Services: Whereas there is no justification for the creation of any All-India Service in the areas of health, Engineering, judiciary etc. because these deal with subjects included in the state list, but the demand for abolition of All India Services i.e. IAS, IPS and IFS is totally unjustified. Firstly, these services were created to play an integrative role and advise the political executive in administration of the state, without any fear, and expectation of any favour. The members of these services were expected to be sufficiently strong willed and independent and be true to their oath of loyalty to the Constitution. Their only commitment was to safeguard National interests. State services it was feared may run along with the political currents and be influenced by local interests and local prejudices. Forest and internal security were required to be administered by All India Service, because of obvious necessity and historical linkages. These should be allowed to continue. However, the quotas of intake from promotion and direct intake, needs to be reviewed alongwith a suggestion that 50 percent of the promotees should be motivated to go to the outside cadres (not their own state cadre) as their experience in one state may prove useful to the other. Correspondingly the intake of direct recruits from the State should be correspondingly reduced to maintain the status quo so far as the intake is concerned.

Need for Fiscal Discipline

While there is strong case for transferring resources under certain entries from centre to the states and the state which show better performance in population control, poverty alleviation and are prepared to raise resources, under the Heads already delegated to them should be compensated through matching loans and grants. The Centre should encourage the states raising resources and punish the states guilty of wastage of resources, wilful refusal to tap resources already being tapped by other states. Even under the existing provisions, some states have done far better than others. The state should also be encouraged to bring down their administrative expenditure and states guilty of various scams and scandals should be so treated, that all hindrances to law enforcement are eliminated so as to ensure that the law is

above everybody and tax payers money has to be spent as per the requirements of the Constitution and law. Reduction of fiscal deficit is possible only if there is fiscal discipline at all levels. To achieve all this, the centre state relations need to be defined more precisely, and hence the relevant provisions need to be given a fresh look. A warning signal has been sounded by Shri Montek Singh Ahluwalia, member Planning Commission, when he points out as under.

"Punjab and Haryana were the two richest of the 14 states in 1990-91. But their growth rate of Per capita State Domestic Product in 1990's were not only lower than in the 1980s, but actually below the national average. Punjab, the land of sturdy farmers, the home of brave freedom fighters, the sword arm of the nation has been bled white through the proxy war waged by Pakistan and therefore its declining agriculture, the extremely poor literacy rates among Scheduled Caste Population and their higher fertility rate, soaring population of below poverty line of SC people especially in southern Punjab should get a special attention. We can ignore these ominous signs at our peril. Hence the devolution package of resources, has to take note of these facts and give Punjab a special consideration. If Kashmir needs Article 370 on a permanent basis, Punjab may not be needing any provision like Art 370, but it definitely needs a remedial action plan, so that the injustice in the long neglect of Agriculture, and of small scale industry ends. The Un-employment among the youth (15-35) is increasing with no remedial action plan insight. Immediately steps should be taken for implementing Sarkaria Commission Report especially relating to the Constitution of Inter-state Council as provided under Article 263. A permanent secretariat and a series of standing committees should also be constituted to help the inter-state council to maintain constant touch with the centre and the states. Sarkaria commission had also recommended that the Centre should stop its practice of usurping the state prerogatives, poaching on their sphere and violating the letter & spirit of the Constitution by poaching on the Concurrent List at the expense of the state list of subjects (The view already expressed by the author).

The Rajamannar Committee had sought to widen the base of devolution of resources to the state by adding corporation tax, custom and export duties and the tax on the capital value of assets in the divisible pool even in regard to the grant by the Centre to the state. The Committee wanted an independent and impartial body such as the Finance Commission to

be incharge of the distribution. Thus, while there is full justification for equitable, just & fair distribution of resources between the Centre and the state, the votaries who speak of advocating a confederal system on the basis of Amritsar Declaration of 1990, Anantpur Sahib Resolution, 1973, be silenced for silenced for all times to come.

Sarkaria Commission also found that there was no need to amend the Constitution as the Constitution already had provisions to allow the states sufficient freedom in their sphere of constitutional ~~objection~~ obligations.

Justification for Constitutional Review

*Dr Vidya Bhushan Gupta

Constitution of a State is in fact a life-line and a guiding force for survival and governance. It is a supreme document. It sustains unity, security and politico-socio-eco-development of a nation. The role of constitution becomes more significant particularly in a federal polity where socio-cultural, religious diverties exist and where both territorial unity and social harmony become complementary to each other.

Same is true in case of Indian Constitution. The Constitution of India - as a constitutional document is a master piece with not many parallels. During the last five decades, it has become instrument in establishment of positive atmosphere conductive to the growth of democracy, social justice and development.

But in no way a constitution is God made. If the time demands it can be reviewed. If need be it can be changed/altered/amended/repealed, so that it stands the test of the time.

Hence no one can stop a nation to review her constitutions as we live in a dynamic world, which is fast changing with the change in all socio-politic-Eco and cultural life. A debate is, therefore, going on about whether there is a genuine need of constitution review in one of the biggest democracy of the world. The B.J.P. led N.D.A. pleading for the Review of constitution and had raised this issue even during last Election by highlighting the dangers of instability. It tried to expedite this process just after getting absolute majority in the last Election. Even President of India, while addressing

professor of political science
University of Jammu, Jammu.

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the joint session of the two houses of Parliament on October 25, last year refered his Government resolution for a fresh look on the Constitution of India in order to prevent political instability. The National Commission to Review the working of Constitution of India has, however, been constituted with the most eminant personalities of the time, in June, 2000. But B.J.P. leaders tried to announce the changes which they are manifesting even before the Constitution of N.C.R.C. This created doubts in the minds of the people about their intentions. The former Chief Justice of India A.M. Abmadi pointed out "In the life of a country's constitution, 50 years is not a sufficient long period to call for its replacement. If the idea is to review the constitution in its entitity, I am afraid it is pre-mature. But if the objective is to review certain grey areas only that may be different matter. Refering to the review of the Constitution move Professor C.P. Bhambri said :

> "It is a trap being laid by the B.J.P. and they will be successful in delightimising the constitution and raising in the minds of the people doubts about it."

Professor T.K. Oommen pointed out :

> "The B.J.P. motive is to convince the people that cultural nationalism will be more effective than the cultural pluralism endorsed by the constitution. Through the review they can communicate to the masses that there is an alternative way of building the nation."

Professor Dipankar Gupta said :

> "In normal circumstances, a review does not really call

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for such a hue and cry. But in this case, it is not in the national interest - it is motivated by sectional party interests."

He. A.K. Antony

~~Even the President of India K.R. Narayanan~~ pointed out that "....Parliamentary democracy is best suited for the country where economic inequality between caste and religious communities persisted and where regional and language contradictions existed. While stressing that our recent experience of instability in Government is not sufficient reason to ~~p~~ discard parliamentary system in favour of the presidential or any other system, he Mr. Sita Ram Yechury of the C.P.I. - M said :

"The B.J.P. is trying to undermine the secular foundations of the Constitution. They have a theoretic Hindu Rashtra in mind and the RSS ub fact feels that the present constitution is un-Hindu."

The people and the political parties thus warned them not to alter the lofty ideals secularism, Democracy, Social Justice etc. etc. enshrined in the constitution. The N.D.A. leadership then announced that the basic features of the constitution shall not be tempered. The secularists and federalists, however, want to retain the existing constitution so that it should not become a pawn in the hands of Rightiests forces. They believe that the constitution contains the high ideals of socialism, secularism and integerity of a nation. Equality, social justice etc. Those who pleade for review stress that it is essential in the light of 50 years experiences to cure certain evils cropped up during this period such as :-

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1. Highly Centralised Constitution
   - To make it a true and genuine federal with more powers - financial and otherwise - to the States.

2. Neither Parliament nor the State Vidan Sabhas doing with any degree of competence or commitment what they are primarily meant to do.

3. Most of elected members are neither trained in law-making nor do they seem to have an inclianation to develop the necessary knowledge and competence in their profession.

4. Instability and frequent mid-term polls - because of un-constructive vote of confidence.

5. Need for greater accountability.

6. Constructive vote of confidence.

7. Fractured verdict - i.e. electorates failure to give a clear verdict in favour of one political party.

8. Decline of party discipline.

9. Horse trading in parliament.

10. Faulty electoral system - lack of state funding of elections, sharpening of the anti-defection law, auditing of the accounts of political parties and rules of ensuring inner party democracy in political parties.

11. No five-years fix term for legislatures and fixed term for L.S. if no alternative Government is formed, after the passage of vote of no confidence.

12. Misuse of Governor Office and Art 356.

13. Lack of majority of party in power in Rajaya Sabha and

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its impacts on the working of Central Government i.e. stopping a bill passed by L.S.

14. The status of the caretaker Government.

15. Disregarding the presidential advice for convening the Rajya Sabha because the President can convene Parliament only on the advice of Government.

16. No penality for repeated disruptions of Legislative procedure.

17. Checks against imposition of National Emergency.

18. Criminalisation of Politics.

19. Checks against social and political violence including terrorism.

20. Corruption in High Offices.

21. Transfering part of provisions from part IV to Part III of the Constitution.

22. Parliamentary VS presidential form of system.

23. Reservation policy and decline of administrative efficiency.

24. Lack of cheaper, quicker, transparent dispersment of justice.

NDA leaders repeatedly stressed that certain aspects of the Indian Constitution and constitutional practices call for a healthymf democratic debates and if possible a review also. We do agree that there is no harm of their critical examination in the light of experience of last five decades. But certain issues they raised recently have already discussed

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and thoroughly debated in the Consembly of India and rejected. For example parliamentary VS Presidential system and giving emphasis to stability over accountability etc. etc.

They do not understand that most of these evils are administrative problems created by mis government and mis-management and indiscipled political parties. The parties are not behaving in a healthy way. The constitution of India and the constitutional process have been twisted by the political bosses and parties to suit their partisan ends from the very beginning.

Some of these evil can be occured by bringing about new amendments in constitution and taking up of Administrative machinary. If American Constitution drafted and adopted more than 200 years back, in the socio-Eco. back round of an non industrial, non neuclear, agricultural society has worked well without resort to review and by amendments (26) and almost always to confer greater liberal and eco rights to its citizen. Why not in Indian constitution.

If an unwritten British Constitution is working well what is wrong with our nation. What is wrong in the working of our democracy and constitution, which cannot be rectified by the available process of change. President K.R. Narayanan rightly said :

> "Today - we have to consider whether it is the Constitution that has failed us or whether it is we who have failed the Constitution."

Most of these evils would have been set right had the central Government adopted and implimented the Sarkaria

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Commission Report. The Sarkaria Commission had already made thorough study and review these constitutional evils before making concrete recommendation. But unfortunately its recommendation have not yet been accepted and implemented.

It is not the fault of constitution, which is sacred document and drafted by C.A consisting of the most eminent intellectual of that time. Constitution or review process cannot change human nature, nor create saints out of thonies. For changing the altitude, outlook and values of the people, we have to tap sources other than law and constitution. Need for development of good/healthy tradition and constitutional convention is much more important than the review of the constitution. No constitutional change is required to reform party system.

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Constitution : A Review

1. Decision to Review the Constitution.
2. Announcement by the Prime Minister.
3. The reaction of the President.
4. Cabinet Decision.
5. Formation of the Commission.
6. Opposition to the Commission.
7. Terms of Reference.
8. Constraints on the Constitutional Commission.
9. Functioning of Party System in India
10. Constitutional and Legal Position
11. Functioning of Political Parties during the last fifty years
12. Political Parties in the Parliament and State Legislatures
13. Problems in the working of Party System
14. Suggestions.

Decision to review the Constitution

The functioning of the Constitution since the time of its adoption on January 26, 1950 and subsequent developments on the Indian political scene necessitated a review of the Constitution and its functioning in regard to meeting the challenges of the Indian polity; specially, for providing political stability alongside socio-economic development.

Announcement by the Prime Minister

The Prime Minister, Shri. Atal Bihari Vajpai, announced the decision of the Government to appoint a Review Commission on January 27, 2000, in the Central Hall of Parliament. The occasion was the celebration of the golden jubilee of India having become a Republic. The Prime Minister justified his decision of setting up of a Review Commission on the need for political stability and the 'pressing challenge' faced by modern India of increasing pace of development.

The Reaction of The President

The President, Shri. K.R. Narayanan, expressed a cautious approach. He stated that the Constitution should not be tinkered with. He said that, " whether it was the Constitution that failed us, or we, the Constitution". He made these remarks at a special address to the lawmakers on January 27, 2000, to mark the golden jubilee of the Republic. His remarks came as a sequel to the Prime Minister's reference to the need for a review of the Constitution within the framework of the parliamentary democracy. He said that recent political instability was not a sufficient ground for resorting to a change from parliamentary to a presidential system of government. In fact, the present system could become a factor for stability as people know that an unpopular government need not last its full term.

Cabinet Decision

The Cabinet Resolution adopted on February 1, 2000, stated " The Commission shall examine in the light of experience of past 50 years as to how far the existing provisions of the Constitution are capable of responding to the the needs of efficient, smooth and effective system of governance and socio-economic development of modern India and to recommend changes, if, any, that are required to be made in the Constitution within the framework of parliamentary democracy without interfering with the basic structure or basic features of the Constitution".

Formation of the Commission

On February 13, 2000, The government announced the setting up of a 11 member Constitution Review Commission to be chaired by Mr. Justice M.N. Venkatachalaih. The Commission is expected to submit its Report' within a

year' and suggest changes, if, any, within the framework of parliamentary democracy. The other 10 members of the Commission are ; Mr. Justice B>P. Jeevan Reddy, Chairman of the Law Commission and former Supreme Court Judge, Mr. Justice R.S.Sarkaria, who is well-known as Chairman of the Commission on Centre-State Relations, Mr. Justice Kondapalli Punniah, former Supreme Court Judge, Mr. Soli Sorabjee, Attorney-General, Mr. Parasaran, former Attorney-General, Mr. P.A.Sangma, former Speaker of Lok Sabha and a tribal Christian leader from the North-East, who is currently with the Congress Nationalist Party, Mr. Subash Kashyap, former Secretary- General of Lok Sabha, Mr. C.R.Irani, Editor-in–chief of Statesman, Mr. Abid Hussain, who has served as India's ambassador to the US and Ms. Sumita Kulkarni, former Member of Parliament and grand-daughter of Mahatama Gandhi. The Commission does have a representative of any political party. Mr. P.A. Sangma is a member of the Commission as a former Speaker and a tribal leader of the North- East. He was invited in his individual capacity and not as a member of the Congress Nationalist Party.

The joint Manifesto of the incumbent National Democratic Alliance (NDA), comprising 24 parties, had included the review of the Constitution in their agenda during the last General Elections.

The Bhartiya Janata Party had suggested a change-over to the presidential system of government and a fixed term for Lok Sabha, for providing political stability in the country.

The Congress Party, in 1980, (some of the leaders of the Congress: A.R. Antulay, Vasant Sathe and others) had also made similar suggestions. It had proposed a Presidential System of government to provide for a fixed term for the Chief Executive. The Opposition Parties did not favour the changes in the background of the Emergency period (1975-1977), and the leadership of Mrs. Indira Gandhi.

Though, the political scene today, seems to be different. Single party dominance has been replaced by a multi-party system; there is not only one but many claimants to the highest political office of Prime Minister; there are many political leaders; regional political parties have become important players in the politics of the country; coalition governments are formed , as there is no clear mandate by the electorate in favour of any single political party, which is able to secure a clear-cut majority.

Opposition to the Commission

The opposition parties have opposed the formation of the Review Commission, alleging that it is an attempt by the BJP to pursue its 'hidden

agenda' and to 'saffronize' the system. Mr. Anil Shastri, the Congress Party spokesman, criticized the inclusion of Mr. P.A. Sangma, as a member of the Commission. As Mr. Sangma had questioned the wisdom of allowing Indian nationals who were not naturalized citizens to occupy the high offices of President, vice-president and Prime Minister. The direct reference was, of course, to Mrs. Sonia Gandhi, who is not of Indian origin.

The Congress Party under Mrs. Indira Gandhi's leadership and Prime Ministership had drastically changed the Constitution through the 42nd and 39th Amendment Acts. During the Congress rule, a change over from the parliamentary system to the presidential system was also initiated.

The Communist Party of India – Marxist has remained equidistant from the BJP and The Congress. It considers both as 'enemies'; Congress- for being 'authoritarian' and BJP- for being 'communal'. It holds that the real intention of the Government is to undermine the existing Statute and alter it to suit the 'RSS ethos'.

The former 4 Prime Ministers have also opposed the Review. But they have become irrelevant.

The opposition to the Constitution Review seems to be more on protecting personal interests than on public support.

Terms Of Reference

(a). The Commission has to review the working of the Constitution.
(b). The Commission has to submit its recommendations within a year.
©. It cannot rewrite the Constitution.
(d). It cannot change the basic structure of the Constitution.
(e). It cannot change the parliamentary system of government.

Constraints on The Constitutional Review Commission

The Constitution Review Commissions has certain limitations under which it has to function. Since it is not a Constituent Assembly, its task is limited to suggesting changes within the existing framework of the Constitution. It cannot alter the basic structure of the Constitution. The concept of the 'basic structure' of the Constitution was handed down by the Supreme Court in Keshvananda Bharti case. Subsequent decisions in many cases e.g. Minerva Mills , Bhimji case and Waman Rao case etc. Since then many features have been added to the list of features constituting the basic structure of the Constitution. Some of the basic features are; supremacy of the Constitution; republic and democratic form of government; secular character of the

constitution; separation of powers between the legislature, the executive and the judiciary; federal character of the Constitution; sovereignty of India; parliamentary form of democracy; judicial review; and the concept of social and economic justice to build a welfare society. It is perhaps an open-ended interpretation and more features can always be added through judicial review.

The NDA government does not command a two thirds majority in the Parliament. Therefore, the suggestions of the Review Commission, at present cannot be adopted as Constitutional Amendments.

Functioning of Party System in India

It is not possible to suggest changes in all the spheres of the Constitution within the limited scope of this paper. I am restricting the suggestions to only one aspect- reforms in the functioning of Party system in India. The party system in India today presents a chaotic scene. The mushroom growth of political parties does not indicate any serious commitment to any ideology or to the public and national interest. " The decline of the Congress Party, marginalization of the Communists, and the growing importance of caste, communal, regional, sectarian and ethnic groups in Indian society as a vote bank have made the political environment so fractious that a national consensus on any issue has now become near to impossible".- (South Asia Analysis Group).

Constitutional and Legal Position :

The political parties in India do not find a direct mention in the Constitution of India. There are two provisions in the Constitution relevant to the functioning of political parties in India ; Article 324 and the Tenth Schedule. Article 324 pertains to the establishment of an Election Commission of India entrusted with the task of 'supervision, direction and control of elections ' to the Parliament and the Legislatures of every State. The Tenth Schedule of the Constitution was added by the Constitution (Fifty-second Amendment) Act, 1985. It deals with the disqualification of a person for being a member of either House of Parliament [Art. 102(2)] or the Legislative Assembly or Legislative Council of a State [Art.191(2)], on ground of defection.

The Election Commission of India recognizes political parties and allots symbols. The status of a political party is determined on the basis of criterion specified by the Commission. There are- All-India parties and

regional parties. Some are - communal parties and there are ad hoc parties too. For a political party to be recognized as a national party, it must be able to win a minimum of 4% of votes or more than 3% of seats in at least 4 State Legislative Assemblies; or 4% of votes or 4% of seats in the Lok Sabha. The number of national parties has been varying from four to eight (4-8) based on the performance. Presently 8 political parties are recognized as national parties. The political parties may be classified on the basis of geographical representation as All India parties, trans regional parties and local parties. Ideological orientation of a party may identify a party as left, right, centre, socialist or leader oriented.

Functioning of Political parties during the last fifty years

Functioning of party system in India has gone through different phases in its evolution to emerge today as a multi-party system. After Independence, the Indian National Congress inherited the legacy of the National Freedom Movement, leading to the establishment of a single party dominant system. The Indian National Congress which was based on a broad consensus (as divergent interests and factions were accommodated within its fold) remained at the centre stage of Indian politics during 1947-1967. The charisma of Shri. Jawahar Lal Nehru and the contribution of Mahatma Gandhi to the Freedom Struggle held the electorates' confidence. The second phase (1967-1977) is characterized by the emergence of coalition governments in the States and the gradual decline of the Congress the party facing internal dissentions. A small oligarchy consolidated power around the leadership, which led ultimately to the declaration of Emergency. The third phase (1977-1989), of the evolution of parties is characterized by the beginning of coalition governments at the Centre, the decline, split and resurrection of the Congress (I), leading to the phenomenon of the so-called dynastic rule, and the simultaneous growth of the regional parties. The fourth phase beginning from 1989 onwards witnessed the re-emergence of coalition politics with a vengeance both at the Centre and the States. Not only did the Congress lost its dominant position, but a kind of multiparty system emerged, in which the regional political parties came to play a very effective role in the formation and deformation of governments leading to political instability and frequent elections.

The General Elections of 1977 are considered a landmark in the development of party system in India as for the first time a coalition of parties was able to win the elections, defeating the Congress and form the

Government at the Centre. This signified the tenacity of the Indian political system where single party dominance gave way to opening a threshold for competitive politics. It also indicated the maturity of the Indian electorate where a change of Government took place without blood-shed. The Electorate displayed non-acceptance of dictatorial and repressive policies adopted during the Emergency period; opposition to suppression of freedoms; upholding democracy and democratic traditions and most important, the respect for supremacy of the Constitution. The post 1977 Constitutional Amendments repealed those Amendments and sections which had violated the basic tenets of the Constitution.

The period between 1977-1980 saw the weakness of the coalition government and eventual disintegration of the Janata Party indicating a lack of commitment to national politics and over-riding personal ambitions of political leaders. The Bharatiya Janata Party emerged as an alternative political party. Although the Congress(I) came back to power in 1980, but the non-Congress parties failed to present a united opposition and challenge to the Congress I until the late 1980s.

The Ninth General Elections of 1989 threw open new trends; for the first time a minority government headed by Shri. V.P. Singh was formed at the Centre; almost all the non-Congress groups, despite belonging to opposing ideologies, be it left or right, supported the National Front Government of Shri. V.P. Singh. The single binding factor was- keeping the Congress(I) out of power. However, his Government fell soon in 1990. The next government of Shri. Chandra Shekhar could barely survive for four months. The subsequent political developments have shown that the minority governments do not survive for long. The coalition partners have narrow political objectives to remain in power and to bring down the government at will whenever their interests conflict with those of the government.

The political parties rely on powerful personalities or community or religious leaders. They have their own priorities and view points. They influence the politics centered around themselves. Many political parties are formed by such leaders. The party politics in India has become more personality based rather than issue or ideology based. The regional parties have emerged as strong factors in national politics as many of these are partners in the ruling coalition. These parties raise issues of regional importance as well as demands for decentralization and state autonomy.

There is a distinctive party system in the States. Some have developed a multi-party system in which one party dominates; some have strong parties in a multi-party system; and some have bi-party system. The functioning of the party system during the last fifty years has in general undergone following changes:

1. Single party dominance has been replaced by multi-party system.
2. The present day trend is indicative of Coalition Governments, where a number of political parties professing different views and programmes have to work together towards national governance.
3. Regional parties have widened the support base of political power and their importance to the national politics has increased. This has paved the way for a trend towards demands for greater decentralization and state autonomy and a greater share of resources in the Centre-State relationships.
4. The political parties often use dubious means to get into power during elections
   leading to criminilization of politics, and increased role of money and muscle
   power.
5. The agitational methods used by political parties often violate the fundamental rights of the citizens e.g. in the holding of demonstrations, hartals, bandhs and rallies etc.

Political parties in the Parliament and State Legislatures

The political parties, along with Committees, are one of the significant means of organizing the work of the legislature and developing public policy. In India, since the system is parliamentary, the majority party in the Lower House, forms the Government and has the advantage of controlling the Legislature as well as the Executive. In case a single party wins the majority in the Lower House, it can pass legislation in accordance with its party programme and fulfil its political agenda. As it happened in case of Congress (I), when it was able to introduce sweeping changes to the Constitution through various Constitutional Amendments. In case of a coalition government, the coalition partners exert pressure to safeguard their interests which may not be the same as the national interest e.g. rolling back of increase in prices or the withdrawing of subsidies.

A coalition of parties may be able to form a government but governing together is difficult and sometimes problematic. Political parties in the Parliament are responsible for maintaining discipline. But the past experience of holding the proceedings of the Parliament on whimsical grounds has led to a decline in the prestige of Parliament due to indiscipline and disruptive activities of political parties to stall the democratic functioning of Parliament.

Problems in the working of Party System:

In the background of the foregoing analysis of the functioning of the party system in India, it is evident that the parties in India face a number of challenges. Not only they have declined in terms of their ideological orientations and commitment to the welfare of the masses, but in the recent past they have shown tendencies of factionalism, doggedness in terms of opposition for opposition sake, and agitational politics. At times they have displayed behavior, which tends to be unprincipled and unconcerned for the welfare of the masses. Many of their leaders have been affected by communalism, caste, community or religious biases and have known to have links with mafia groups, criminals, senas, and militant or fundamentalist organizations. Changing of party or group loyalty is endemic in party organizations in India, and almost everyone is willing to defect at the drop of the hat, if the grass seems to be greener on the other side. Parties make and break political alliances to maintain their influence within the party and government, and to remain in power with the aim to keep the rivals out. Most of these factional groups are non-ideological and have no vision of the good of the people nor any capability to govern or undertake party responsibilities.

The political parties in India face organizational problems in regard to discipline, defections, intra-party organizations, elections within the parties, and splits in the party. Raising of adequate funds for party organizations and activities by legitimate means and their appropriate and effective utilization during non-election and election periods is a perennial problem. criminalization of politics and politicization of criminals and the maintenance of public ethics is another area of concern in respect of party functioning.

Continued-10

Suggestions

1. To provide for a stable and responsible party system, more strict provisions can be made for registration of political parties, both at the national and regional or State levels.
2. De-rcoginition of political parties, which violate the conditions of registration can be made more stringent.
3. Introducing democratic reforms in the party organization at all levels to provide for inner-party democracy.
4. Elections within party organization can be made one of the essential pre-requisite of registration of a political party.
5. Provisions can be made for the compulsory training of party cadres in the field of functioning of parliamentary democracy.
6. Regulation of party funding- transparency in the distribution and spending of funds.
7. Compulsory audit of party funds.
8. Party system and Electoral system - The electoral system can be reformed so as to make it possible to establish a two party system or dual party alliance system or a Confederation of political parties. This Confederation can be permanent or for a fixed tenure e.g. for a period of 5 years or more. But it should be formed before going to the electorate for seeking their mandate in a general election. This Confederation can be recognized as a political party. Any mid-term break of the Confederation can be made illegal and the breach leading to loss of seats in the Parliament and the State Legislatures. This can check defections and opportunistic explorations of the political parties.
9. In case of a no-confidence motion being tabled in the Parliament or the State Legislature, it should contain the alternative government with the name of the chief executive and the Council of Ministers, without which the motion should not be allowed to be introduced.
10. In view of the fact that out of 76 terrorist organizations in the world 64 are religion based, legislation should be enacted to provide for a clear-cut demarcation of a political party and a religion based organization.

The suggestions are not exhaustive.

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Justification for Constitutional Review

*Dr Vidya Bhushan Gupta

Constitution of a State is in fact a life-line and a guiding force for survival and governance. It is a supreme document. It sustains unity, security and politico-socio-eco-development of a nation. The role of constitution becomes more significant particularly in a federal polity where socio-cultural, religious diverties exist and where both territorial unity and social harmony become complementary to each other.

Same is true in case of Indian Constitution. The Constitution of India - as a constitutional document is a master piece with not many parallels. During the last five decades, it has become instrument in establishment of positive atmosphere condkutive to the growth of democracy, social justice and development.

But in no way a constitution is God made. If the time demands it can be reviewed. If need be it can be changed/altered/amended/repealed, so that it stands the test of the time.

Hence no one can stop a natinn to review her constitutions as we live in a dynamic world, which is fast changing with the change in all socio-politic-Eco and cultural life. A debate is, therefore, going on about whether there is a genuine need of constitution review in one of the biggest democracy of the world. The B.J.P. led N.D.A. pleading for the Review of constitution and had raised this issue even during last Election by highlighting the dangers of instability. It tried to expedite this process just after getting absolute majority in the last Election. Even President of India, while addressing

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university of Jammu, Jammu.

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the joint session of the two houses of Parliament on October 25, last year refered his Government resolution for a fresh look on the Constitution of India in order to prevent political instability. The National Commission to Review the working of Constitution of India has, however, been constituted with the most eminant personalities of the time, in June, 2000. But B.J.P. leaders tried to announce the changes which they are manifesting even before the Constitution of N.C.R.C. This created doubts in the minds of the people about their intentions. The former Chief Justice of India A.M. Abmadi pointed out "In the life of a country's constitution, 50 years is not a sufficient long period to call for its replacement. If the idea is to review the constitution in its entitity, I am afraid it is pre-mature. But if the objective is to review certain grey areas only that may be different matter. Refering to the review of the Constitution move Professor C.P. Bhambri said :

> "It is a trap being laid by the B.J.P. and they will be successful in deligitimising the constitution and raising in the minds of the people doubts about it."

Professor T.K. Oommen pointed out :

> "The B.J.P. motive is to convince the people that cultural nationalism will be more effective than the cultural pluralism endorsed by the constitution. Through the review they can communicate to the masses that there is an alternative way of building the nation."

Professor Dipankar Gupta said :

"In normal circumstances, a review does not really call

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for such a hue and cry. But in this case, it is not in the national interest - it is motivated by sectional party interests."

Mr. A.K. Antony ~~Even the President of India K.R. Narayanan~~ pointed out that ".....Parliamentary democracy is best suited for the country where economic inequality between caste and religious communities persisted and where regional and language contradictions existed. While stressing that our recent experience of instability in Government is not sufficient reason to discard parliamentary system in favour of the presidential or any other system, he Mr. Sita Ram Yechury of the C.P.I. - M said :

> "The B.J.P. is trying to undermine the secular foundations of the Constitution. They have a theoretic Hindu Rashtra in mind and the RSS ub fact feels that the present constitution is un-Hindu."

The people and the political parties thus warned them not to alter the lofty ideals secularism, Democracy, Social Justice etc. etc. enshrined in the constitution. The N.D.A. leadership then announced that the basic features of the constitution shall not be tempered. The secularists and federalists, however, want to retain the existing constitution so that it should not become a pawn in the hands of Rightiests forces. They believe that the constitution contains the high ideals of socialism, secularism and integerity of a nation, Equality, social justice etc. Those who pleade for review stress that it is essential in the light of 50 years experiences to cure certain evils cropped up during this period such as :-

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1. Highly Centralised Constitution
   - To make it a true and genuine federal with more powers - financial and otherwise - to the States.

2. Neither Parliament nor the State Vidan Sabhas doing with any degree of competence or commitment what they are primarily meant to do.

3. Most of elected members are neither trained in law-making nor do they seem to have an incliaination to develop the necessary knowledge and competence in their profession.

4. Instability and frequent mid-term polls - because of un-constructive vote of confidence.

5. Need for greater accountability.

6. Constructive vote of confidence.

7. Fractured verdict - i.e. electorates failure to give a clear verdict in favour of one political party.

8. Decline of party discipline.

9. Horse trading in parliament.

10. Faulty electoral system - lack of state funding of elections, sharpening of the anti-defection law, auditing of the accounts of political parties and rules of ensuring inner party democracy in political parties.

11. No five-years fix term for legislatures and fixed term for L.S. if no alternative Government is formed, after the passage of vote of no confidence.

12. Misuse of Governor Office and Art 356.

13. Lack of majority of party in power in Rajaya Sabha and

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its impacts on the working of Central Government i.e. stopping a bill passed by L.S.

14. The status of the caretaker Government.

15. Disregarding the presidential advice for convening the Rajya Sabha because the President can convene Parliament only on the advice of Government.

16. No penality for repeated disruptions of Legislative procedure.

17. Checks against imposition of National Emergency.

18. Criminalisation of Politics.

19. Checks against social and political violence including terrorism.

20. Corruption in High Offices.

21. Transfering part of provisions from part IV to Part III of the Constitution.

22. Parliamentary VS presidential form of system.

23. Reservation policy and decline of administrative efficiency.

24. Lack of cheaper, quicker, transparent dispersment of justice.

NDA leaders repeatedly stressed that certain aspects of the Indian Constitution and constitutional practices call for a healthymf democratic debates and if possible a review also. We do agree that there is no harm of their critical examination in the light of experience of last five decades. But certain issues they raised recently have already discussed

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and thoroughly debated in the Consembly of India and rejected. For example parliamontary VS Presidential system and giving emphasis to stability over accountability etc. etc.

They do not understand that most of these evils are administrative problems created by mis government and mis-management and indiscipled political parties. The parties are not behaving in a healthy way. The constitution of India and the constitutional process have been twisted by the political bosses and parties to suit thoir partisan ends from the very beginning.

Some of these evil can be occured by bringing about new amendments in constitution and taking up of Administrative machinary. If American Constitution drafted and adopted more than 200 years back, in the socio-Eco. back round of an non industrial, non neuclear, agricultural society has worked well without resort to review and by amendments (26) and almost always to confer greater liberal and eco rights to its citizen. Why not in Indian constitution.

If an unwritten British Constitution is working well what is wrong with our nation. What is wrong in the working of our democracy and constitution, which cannot be rectified by the available process of change. President K.R. Narayanan rightly said :

> "Today - we have to consider whether it is the Constitution that has failed us or whether it is we who have failed the Constitution."

Most of these evils would have been set right had the central Government adopted and implimented the Sarkaria

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Commission Report. The Sarkaria Commission had already made thorough study and review these constitutional evils before making concrete recommondation. But unfortunately its recommend-ation have not yet been accepted and implemented.

It is not the fault of constitution, which is sacred document and drafted by C.A consisting of the most eminent intellectual of that time. Constitution or review process cannot change human nature, nor create saints out of thonies. For changing the altitude, outlook and values of the people, we have to tap sources other than law and constitution. Need for development of good/healthy tradition and constitutional convention is much more important than the review of the constitution. No constitutional change is required to reform party system.

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focussed on. The Constitution has more important provisions to look after the 'Dalit' interests. In the result the whole chain of events leaves behind a scar on the operation of the constitutional provisions. The political management of the BJP Government has revealed poor perception and poorer vision.

A Bihar Package

ALL this does not amount to saying that all is well in Bihar. If dissatisfaction in the articulate political opinion is as widespread as is reported then correctives need to be applied. The misadventure of the short Central rule should not derail a more constructive Centre-State dialogue to this end. The national political parties owe it to the nation to make a move in this direction, more so those which have provided valuable support to constitutionalism in this case.

The State is week financially. There is a breakdown of the administrative leadership. The police administration is far too politicised and deficient in pursuing its charge independently. Development work is slow in movement and delivery. Can the restored government of Rabri Devi be given the support to review the situation and bring about changes that will reduce the level of tension and dissatisfaction in the State population? Even if the Opposition comes from a part of the middle class it has to be honoured. A high-handed rejection and an arrogant assumption of right for what the government has been doing will harm the operations of the government. The position of Laloo Yadav that everything is in order in the State does not give an assurance of right moves. Time is now to force the State into more effective operation of the state machinery.

Bihar has the capacity to rise and disprove the dissenters. As has come out, its crime record is better than several States in spite of the comparatively lower strength of the police force. It has successes to show in several critical areas of which communal tension is only one. Administrative discipline and motivation has to be improved to display the will for development planning. The quality of infrastructure alone will bring more investment of the kind that will allow an employment-oriented growth strategy to be put in place. It has a fine band of administrators and good quality of technical manpower. If given the trust, they will deliver better results.

The political leadership has received a warning. It need not relapse into complacency. The opportunity ignored now will bring it to greater grief in the not too distant future. As always, the people are the better judge on the ultimate day of reckoning during elections. That is the democratic way. □

DEBATE

Distinctive Features of the Crisis

C.B. MUTHAMMA

On February 20 Mainstream *carried an article written and sent to our journal by the reputed Pakistani public figure Dr Mubashir Hasan who was the country's Finance Minister and was incarcerated in the Lahore prison during the Zia-ul-Haq regime. It brought into focus some issues which are of relevance for the countries in our region and need to be discussed at length. With that end in view* Mainstream *invited its readers for a debate. The following is the first response to that invitation. It is written by a senior diplomat (now retired from the Foreign Service) who served as India's Ambassador in various capitals.*

—Editor

The article by Mubashir Hasan—"The Real Crisis" (*Mainstream*, February 20, 1999)—begins by describing the crisis of governance in Pakistan and holds that it is not merely due to inept political leaders, an exploitative economic order, corrupt bureaucracy, unjust distribution of state power between the federation and provinces, lack of democracy, illiteracy or backwardness. It says these contribute to the prevailing lamentable state of affairs in Pakistan but that the real crisis is the crisis of the state. Mubashir Hasan believes it is the same in India, Bangladesh and Sri Lanka; that it is not a new crisis, that it [illegible]tes the existence of Pakistan (and, by implication, the other three countries of South Asia).

He talks of the crisis of the state as something apart from the various problems listed by him in his opening paragraph; he is therefore obliged to look elsewhere for the causes of the crisis of the state, and he points at the people, and alleges that they are against the state, but refuse to do anything to improve matters. He talks of the non-cooperation between the people and the apparatus of the state. He not only details the many ways in which the people reject the state and its authority, but goes further and depicts an even more negative attitude on the part of the people. "They hate the state in their guts," he says,

the judgement of the silent majority is always delayed. Elections to the State Assembly are just a year away. The atrocities on 'Dalits' in central Bihar is a highly emotive issue but does not fall in the same category as elsewhere or that of attack on the Christian minority. Central Bihar 'Dalits' are not part of the migratory Bihar population; they are politically conscious and are fighting for equality and empowerment. The aggressive parties are part of the support base of the parties opposed to the State Government. That is the reason why the 'Dalit' members of the RJD have not deserted the party. In result, the Central Government has shown sheer lack of governmental leadership in working out a strategy to improve the law and order situation and crime control throughout the country and lack of political management in exposing the partisan use of the office of the Governor and the instruments of the coercive powers of the Centre. The way Home Minister Advani was snubbed for his suggestion of an apolitical administration under Central rule only confirms this conclusion.

Politics of Approval of Central Rule

The Central rule has been revoked prematurely for the first time and due perhaps to administrative immaturity and political miscalculation. The provisions of Article 356 are very specific and any government has to prepare itself to implement them. The first step is to lay the proclamation before each House of Parliament. True, no time limit has been provided, but the spirit is clear that it should be the earliest after the Houses assemble, even if voting is scheduled according to the convenience of the two Houses. The government was aware of its numerical strength in the Rajya Sabha; it was not necessary to rub the point that the second chamber had a status lower than that of the Lower House. Unfortunately for the government this is not the case in respect of approval and consequences flowing from the use of Article 356. For Venkaiah Naidu, the BJP spokesperson, to insist that the mandate of the Rajya Sabha was six years old was adding insult to injury. Rajya Sabha has a continuous mandate and it is the Council of States, the representation of the concerned States. In the event of the Lok Sabha being under dissolution, the approval of the Rajya Sabha is mandatory within the statutory period of two months. Finally, after having secured the approval of the Lok Sabha the government did not go to the Rajya Sabha. Its representatives started talking instead of many options. Once the Congress had made its voting choice in the Lower House, there was really no choice but to face the inevitable consequences of failure.

The numbers in the Upper House are such that Congress support alone could have saved the day for the government. It should have gone into the whole controversial exercise only after talking to that party. It did not do so. It picked up stray expressions of revulsion at the killings in Jehanabad by Sonia Gandhi; those did not amount to any specific plea for the imposition of Central rule. But the BJP members mounted a campaign to force the Congress into support. The 'Dalit' issue was brought in and the Congress threatened with the consequences of not supporting Central rule. The Congress response remained restrained and according to what suited it politically. It was preposterous for the BJP to offer political advice to the Congress; this could only enrage that party. By the time Prime Miniter Vajpayee called on Sonia Gandhi to seek support formally, it was too late to retrace the steps even if a poor precedent was to be supported. The BJP ploy to include a support for the proclamation in the President's address and claim moral victory by getting the vote of thanks passed was destined to backfire. It was forced to bring the motion in the Lok Sabha and succeeded in getting it passed. Instant claim of moral victory and popular support queered the pitch for a showdown in the Rajya Sabha. Once again, after a lot of dithering, the motion was not brought up. Instead, the government revoked the Central rule ahead of the vote of thanks to the President for his address. This was a failure of the chosen political strategy that succeeded with the partners. It was not sufficient for the occasion. The circumstances under which the revocation has taken place have disclosed political ineptitude aplenty.

Constitution is not an arena for partisan power play. If the Congress indulged in wrongdoing, it is not compulsory for the BJP to imitate it in those acts. This is, in effect, what the BJP pleaded. Constitutionalism demands some concern for political ethics. But the BJP has accepted the philosophy of stability as a superior guide to sustainability of power than morality. This is the cause for suspicion in its intent to change the Constitution and organise a commission to review it. The Constitution is, however, a repository of faith in democratic values of which the legal provisions are only the external expression. Propriety and legitimacy of action are more important. There was impropriety in exploring options which do not exist on the face of it. Legitimacy of action became challengeable when rather than disclosing and debating all the grounds, the 'Dalit' issue was tried to be

though there is no constitutional sanction against the Union, except resort to judicial intervention. There is, thirdly, the breakdown of the constitutional machinery in the State. This can apply to the functioning of the organs of state power and dismissal of the government in case of perpetual instability involving defections and horse-trading clearly falls in this category. Of the two courses available, namely, either elections under a caretaker Chief Minister or under a Governor, the first is more democratic but the other option is not impermissble. The courts have repeatedly clarified that the test of majority is on the floor of the House and the result should be acted upon. There is, finally, a more grey area when a Ministry is dismissed on grounds not coming under any of these categories. The law and order situation falls in this last category verging on unconstitutionality.

The application of the law and order criteria is full of infirmities. It provides unlimited scope for Central discretion which is violative of the spirit of Article 356. The first entry in List II of the Seventh Schedule of the Constitution mentions public order and not law and order. Public order implies extreme kind of civil disorder which should come within the scope of Article 355 of the Constitution which casts a duty on the Union Government to protect the State against internal disturbance "to ensure that the government of every State is carried on in accordance with the provisions of this Constitution". This provision does not provide for the takeover of the State administration but rather support to it. Of course, if the State obstructs, the sanctions under Articles 365 and 366 will naturally become operative. The deployment of Central paramilitary forces will come within the scope of this undertaking. This will be in effective support of the State police. The two relevant Articles working as sanctions use the following formulation:

> a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution.

However the responsibility in respect of public order belongs to the State. If this power is usurped by the Union then the State autonomy is totally eroded for which there is no commensurate responsibility entrusted to the Centre. Finally, public order has two aspects, namely, policing and criminal justice including performance of law courts. Article 356 very specifically provides that the Presidential proclamation cannot cover the High Court, but covers perhaps the lower judiciary under its control. Thus the totality of the provisions of the Constitution do not seem to make public order, incorporating law and order, as a ground for direct Central rule.

Moving from law to the question of political discretion, there is no foolproof arrangement for a comparative evaluation of the law and order situation in the States of the Union. Public order is not just crime control which is compiled centrally but is subject to controversy since statistics can be doctored. Complaints of non-registering of complaints abound in States, including Delhi which is directly under Central control. More problems arise when parties of different political persuasions are in power at the Centre and in the States. Sharing of intelligence by the Centre is deficient even in areas where cooperation is desired; it is non-existent in the political area. The judgement of the Centre can, therefore, be challenged politically and otherwise. There is now a stronger human rights angle to the operation of police powers: the concerns of the Scheduled Castes and Tribes Commission as well as the Minorities Commission have also to be addressed. The scope of the rule of law is expanding and the response of the State is material. Once again obstruction by the State can be constituted as creating a situation in which the provisions of the Constitution are not being acted upon. The point is: can this be an area of direct takeover and will such direct takeover remove the difficulties faced? In this context, criminalisation of politics and politicisation of crime is a national phenomenon; it is not confined to any single State. The metropolis of Bombay is home to all sorts of criminal and mafia gangs. Delhi's crime record is progressively deteriorating and the High Court has declined to accept the claims of improvement made by the Home Ministry. There are any number of political allies of the BJP at present claiming that the situation in their State was worse than in Bihar to press for Central rule. The conclusion is irresistible that the law and order situation does not come within the scope of the extreme provision for Central rule.

The constitutional provision has to be seen dispassionately and bereft of the image Laloo Prasad has created. The tendency to whip up passions to justify the use or misuse of the Constitution can only divert attention from constitutionality. In the case of Bihar strong opinions have been expressed. The partisan use of the state coercive machinery is alleged to have reached intolerable levels. The inaction of State administration to deal with rowdy elements and the collusion of the State's police with the supporters of the RJD in condoning criminal acts have been noted. Going by random opinion, the Central rule was welcomed by the urban middle class; the bashing of the RJD supporters during the protest 'bandh' was also liked by some elements. But

Unless reorganised, the political parties working in the State are incapable of changing this character. This has the potential to discredit Central rule and make it ineffective. And ineffectiveness has the usual *alibi* of its temporary nature and short duration. No Governor or Central Minister has accepted responsibility for poor performance under Central rule in the last fifty years.

Central rule has justification as a temporary measure to restore popular rule when the conduct of legislators makes it possible for the constitutional machinery to work. Instability brought about by defections; split in parties that constitutes the lapse of mandate; inability to carry out Central directives and guidelines; creating conditions that lead to enmity between communities; and showing disinclination to abide by constitutional propriety are relevant examples of such occasions. The main purpose should be to force a renewal or revision of popular mandate and not rule by other means. Misuse of Article 356 has been regularly alleged because of the political perception of using Central rule to manipulate the administration in its favour. There have been charges of using the levers of power to manipulate the electoral verdict or misuse the office of the Governor to defeat a popular verdict. The incidence of high-handed politics has defamed the provision in the Constitution.

Political powerplay can hardly be igonored in the instant case either. The repeated plea of Advani that the act was bereft of political motives indicated its certainty. After all, political parties and politicians of all hues are not innocents. There has been no will to enter into a dialogue and work out a consensus for bringing the resistance movements into the mainstream of politics, not in Bihar, not elsewhere. It was not done before Laloo came on the scene; it has not been done since, even though even the opponents of today were friends of an earlier period. The opposite is the reality. Every massacre is made into an occasion for gaining political mileage. A pilgrimage to the carnage site ends up into a demand for the resignation of the government of the day. There was no difference this time. There is one significant development. What is highlighted is the plight of 'Dalits' as the main issue. The reality is that the aggressiveness of the "high" caste is the main issue. The Ranvir Sena is reported to be almost two lakh strong by now. Are the political workers of the agitating and ruling party prepared to assist the administration in dealing with them? There is no public commitment on that. These are material issues in exploring the frontiers of political motives. Political motive as the principal *rationale* makes Central intervention controversial.

Law and Order in Constitutional Breakdown

It has become axiomatic to explore the constitutionality of Central intervention. Recourse to the law court and judicial pronouncements have provided some guidelines and created grey areas in the process. Some cases are even now pending before the Supreme Court for declaratory orders. But the Constitution is not merely a matter of legality; it is also a propriety of working conventions. Politicians as lawyers is a dangerous development since legal loopholes become more material than sound political conventions. In the current case also, ways to engage the courts were loudly considered. The superior courts are facing embarrassing references because political leaders try to bring them in the 'political thicket' to strengthen their case. This time round maintenance of law and order has appeared prominently as a factor in considering Central rule.

The Constitution does provide for restraint with multiple checks in implementing the structure of Articles 356 and 357. The checks are: legal, implying question of the *bona fide* as well as reasonable nexus between reasons disclosed and satisfaction of the President making every case justiciable; political, implying reasonable certainty of approval of Presidential proclamation by both Houses of Parliament; legislative and financial, implying approvals in Parliament by both the Houses of the needed measures in time; administrative, implying capacity of Central intervention to remedy the situation decisively; and ethical, implying propriety and legitimacy in securing the state rather than partisan political objectives. The premature revocation of the proclamation has already raised doubts about a proper and mature evaluation of these preconditions by the Union Government which in itself constituted a violation of constitutional norms.

The use of this provision falls in four categories. There is, first, a clear area of action laid down in the Constitution itself. The contravention of directions under Articles 256 and 257, for instance, will constitute enough ground for the dismissal of a State Government. This has been made abundantly clear in Article 365. The State has, secondly, to honour the jurisdictions of the Union as in List 1 of the Seventh Schedule and facilitate its performance. Any obstruction can constitute violation of the purposes of the Constitution. The Union also must respect the jurisdiction of the State, even under List 3 even

opportunity to control the levers of administration.

Violence of Land Relations

In an era when the alternative economic strategy of resolving structural problems is having strong backers, the unresolved issues in agrarian relations are going by default. There are two kinds of problems that touch on the interests of almost every social group. The first set of issues are concerned with land reform measures *per se*. Regularisation of 'homestead' land and improved, secure housing; removal of encroachments on village commons and regularised possession on government land by powerful castes; enforcement of "land *patta*" by actual possession and land development alongwith the police respect for the "*patta* holders" in preference to fictitious claims of others; unearthing of "*benami*" lands in violation of ceiling laws; and clarity about the rights on water in tanks, *aharsand pyans* for irrigation, fishing and other uses come in this category. The more determined enforcement of tenancy laws and simultaneous implementation of consolidation of holding can initiate the process of building bridges between the Dalits and the revenue and police machinery. This remains an area of neglect.

Agrarian labour relations is equally important. Minimum wage enforcement is the more visible cause of trouble between the landless workers and the land owners. It is not merely the p'yment of government-fixed wages which, in a number of instances, can be lowered by negotiations. The provision of negotiation and bargaining can bring the two sides together. The Kerala law on tripartite negotiation and wage fixation before each cropping season is worth emulating in this respect. The incidence of absentee land-holding with musclemen managing the labour relations is another problem. Delayed payment of wages and its linkages with debts leave a lingering fear of injustice. Finally, sexual harrassment of women labour and their position as property of the landholder is no longer tolerated. These are the issues in social relations that give a violent face to the changing social mindset. The RJD rule has made no difference to the scenario.

It is simplistic to put all this in the caste framework. Class attitude also matters. There is lack of clarity. The real problem is the rise of the private army of the landholders. Their leadership may be caste-based but the membership is not. To give respectability to such barbarians by taking them to belong to "high" castes mocks at the votaries of social harmony across the board. It is difficult to treat them as hardened criminals if they get the treatment which people of culture and quality deserve. They also provide the feeling of solidarity with people in politics and administration belonging to their castes and undermine their status. Possession of property must not become the arbiter in this matter. Unfortunately that is the impression. This is the reason why one side feels that violence has resulted from resistance and the other side attributes violence to the necessary instrument of domination. This nexus is yet to be broken. Bihar cannot see agrarian peace till the government makes moves to take these relations into the modern age.

Rationale of Central Rule

This is a long background but is necessary in the context of the instant reason advanced for Central rule in Bihar. Karpoori Thakur had once protested that violence in central Bihar should not be made the reason for a special programme of development. That could ignore the deep-seated causes for the violence. On the current stress on violence against Dalits as a reason for Central rule, a senior Bihar Congress leader, Ram Swaroop Ram, has rightly emphasised that whenever a social or political group desires Central rule in future it may have the incentive to kill Dalits. Violence is merely a symptom and to make the symptom into a *rationale* for an emergency constitutional provision is not justified. The Central Government, in its long denunciation of the happenings in the State, has not displayed any serious package of activities to deal with them. A prior package would have made the case stronger.

Central rule is a replacement of a proximate government by a distant one; replacement of Ministers by bureaucratic advisors; narrowing the scale and universalism of responsiveness; and clogging representative debates and expression of public weal. It should never be forgotten that Indira Gandhi invented internal Emergency in 1975 under a similar pretext. Rajiv Gandhi was assassinated in Tamil Nadu after it was placed under Central rule. Violence in Punjab and J&K escalated after popular rule was given a marching order by the Centre. Long Central rule in these States has not made a difference; violence fatigue has. If Bihar is not showing such fatigue the causes are more deep-rooted. No political party has presented an analysis and strategy to deal with it. The character of Bihar politics, its increasing stridency and toleration of violence, the practice of using violence to settle political scores with pressure on administration to tolerate it; resort to politics by other means have led to a collapse of governance.

leaders could only react; the agenda was forced by Laloo. The 1991 parliamentary elections and 1995 Assembly elections confirmed this situation and warded off the strength of the "incumbency factor". The Samata Party, born in 1994, could not make a difference and had to make common cause with the BJP in the parliamentary elections of 1998 on the single issue of getting rid of Laloo. The corruption cases and claims made a difference but proved inadequate. The Janata Dal was divided and Laloo split the party this time carrying the majority once again to retain his hold on power. The RJD showed flexibility in forging alliances and consolidating its hold on power. The troubles with law courts did not prevent Laloo from remaining a symbol of secularism and social justice. The state politics was at no period identified so much with a person.

Laloo Prasad has very clearly manipulated the ideology of secularism and social justice and prevented the rise of alternative leadership within the party. There are no ideologically charged worker cadres or intellectually-oriented individuals and activist groups. There is a rousing of caste and community solidarity to challenge the dominance of the older combinations and leaderships. Even when no material difference has been made in the situation of the under-privileged, a sense of being part of a resistance brigade against the old order seems to prevail. The strongest opponents are prone to admit the hold of the man on the masses. Splits in caste-combinations and desertions by leaders should have weakened his hold on power but that has not happened. After the 1998 parliamentary elections, he has not conceded further ground at the State level to his opponents in the by-elections. The brief period of Central rule has not led to desertions from his Legislature wing as was expected. It will be wrong to claim that ideology is a strong point in practical application but it has been projected in a way that makes it so. The State still suffers from the politics of insecurity and the Janata Dal/RJD reflects that in ample measure.

The caste balance in the State is highly unstable. The RJD is being seen as narrowing its focus for consolidation among the OBCs and minorities. It is generating strong antagonisms among other social combinations. As of now, therefore, there is disruption and violence. The RJD has only copied the strategy of the older power structures to consolidate a dominant caste hold on power. This is now being challenged by others by means political and non-political. The urban areas and the upwardly mobile middle class have joined in the fray. Tribal Bihar does not seem to be drawn into this fight. The 'Dalits' are divided but there is disillusionment. Bihar's social scenario is one of frustration. This is not the least due to misuse of administration for partisan gains, the same tactics that was adopted by others and attacked by leaders like Karpoori Thakur. Anarchy in party organisation, rise of splinter parties, rousing of social consciousness, and politics of brinkmanship have left only the administration for mediation between the 'haves' and the 'have-nots' as in central Bihar. The failure is not because of lack of capacity but because of the culture of political domination. The RJD rule has become progressively more intolerant to administrative mediation. It was not so in the initial years of Janata Dal rule. This is a major cause for failure in controlling violence and delivering development.

In the context of central Bihar, "liberated districts" imply that the collaboration between the administration and the social groups has broken down. There is interaction but no support for conciliation. Group violence faces stronger state violence and generates forces of alienation. The administration wields weak instruments to bring them together for dialogue since political dialogue has broken down and social antagonism has been heightened. There is some change in the development functionaries' ability to run programmes which are carried out with the consent of the leaders of resistance movements. The dialogue on development is on. What is not on is the fairplay in the administration of criminal justice. "Liberation" has resulted in lack of faith in the police system; lack of trust in the criminal justice apparatus; recourse to rough and quick means of redressal of grievance arising from exploitation and oppression. It is not possible to generate trust in the criminal justice system by just opening 'Harijan thanas' or making deputation of Central forces. The feeling of biased political control on police and criminal administration in general has to be removed. This is an uphill task and a slow process. The process is not helped by calling resistance movements "extremist". It is not helped by strong measures when "high" caste people are killed and weak and slow steps when "Dalits" are the victims. It is not helped either when "Dalits" rot in jails which hardly play host to "high" caste aggressors. Central rule is no answer to these concerns; specially not when its ideology is targetting the weak minorities around the country. These are the strands which did not impress the Congress in finally supporting Central rule. Every party is trying to gain from this unstable social situation through the

President's Rule and Bihar Politics

KAMALA PRASAD

The Union Government imposed Central rule in Bihar on February 12, 1999. This was the culmination of the effort by the BJP and the Samata Party to get rid of the influence of Laloo Prasad Yadav in the State politics and government without recourse to elections. The Budget session of Parliament started from February 22 and Bihar loomed large on the proceedings of the two Houses. A declaration by the Central Government to restore peace and promote clean and effective administration by direct rule only eroded its democratic credibility. The Presidential proclamation faced political hurdles within the coalition and without in the chain of events leading to its approval by Parliament. The State faced in the meantime constitutional ambiguity, political uncertainty and administrative insecurity. The government in the end admitted the inevitable and revoked Central rule on March 9. The briefest brush with Central rule ended; briefest except for the 1995 episode when T.N. Seshan forced the State Government out of power for a few days as its five-year life had expired only to concede an absolute majority for the Janata Dal under Laloo Prasad Yadav.

The initial Central declaration was welcomed by a vocal minority. The tepid response to the protest by the RJD and its strong suppression was even appreciated by a part of the urban middle class. There was expectation that a stable and politically neutral administration will address some of the concerns of this section of the population positively. But events moved differently under pressure for a rule that taught Laloo Prasad a lesson. Home Minister Advani's loud thinking about non-partisan governance and its consequences drew a blank from the conservative supporters of the government. The violence in the "killing fields of Bihar" did not show signs of abating. There was rapid change of critical officials. There was delay in appointment of advisors with suspicion of political manoeuvres. Politics received precedence over governance. On the other hand the Opposition mobilised and put its act together. It soon gained the upper hand in wresting initiative on the issue of final approval and forcing the coalition into postures showing political immaturity.

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In essence there seems to have been three reasons for the imposition of Central rule. First, there was emotional attachment to a pledge by the partners to the Central coalition during the 1998 parliamentary elections:

> If the BJP-led alliance is voted to power, the RJD Government will be thrown out within 72 hours.

There was no decisive mandate for this line. Second, there was trumpeting of the deterioration in law and order situation in the State. The State cooperated in the assessment by a Central team and asked for Central forces to manage it better. The President's refusal to approve Central rule in September tended to disprove this ground. Finally, the killing of 'Dalits' in two incidents in quick succession in less than three weeks during January-February provided an emotive issue of the failure of the State administrative machinery. This was equated with the failure of the constitutional machinery. This development was in the Jehanabad district in central Bihar, the scene of a running feud between landholders and landless workers since 1977. Retalitatory killings in nine districts of the State have not abated and to make it the immediate ground for Central rule was unconvincing. Apparently, then, the political commitment to sack the Rabri Devi Government proved to be the compulsive ground; others were merely contrived situations.

Character of Bihar Politics

AFTER the comparative stability of the eighties, the State politics took a dramatic turn with the State elections of 1990. Social justice had come to occupy a dominant space in political discourse with the rise of the leadership of Karpoori Thakur. Laloo Prasad took the cause further after the tangible gains of reservation in Central jobs and the movement opposing the move. The "Mandir-Mandal" clash of ideology further cemented the gains of Laloo Prasad in the State. He exploited his central position in power to finally become synonymous with his party. Karpoori Thakur had through a long process given expression to the voice of the under-privileged; Laloo Prasad proceeded to give the under-privileged voice and assertiveness. The State politics of the nineties turned to be the politics of an individual. Other

the poorest, the weakest sections of the population in Bihar? With no personal interest or stake? Will the Home Minister of India kindly note? Indeed would the Hon'ble President of India kindly note this peculiar situation in Bihar?

It is in this backgroud that any independent observer would condemn not only the decision of the Central Government but also the attitudes and behaviours of both the Samata Party and Ram Vilas Paswan's breakaway group (in the erstwhile Janata Dal of Bihar), which led to the formation of the Rashtriya Janata Dal. The personal ambitions of a few popular leaders in Bihar—nay, the whole country—appears to be taking us to an abyss, both politically and economically.

Laloo Prasad Yadav has been charged with serious financial irregularities, in the matter of animal fodder supply which is now in the courts of law. That process should take its own course. But, on what ground is the Rabri Devi Government enjoying the confidence of the Bihar Assembly, being dismissed now? If some partners in the present Central coalition government encourage and foment violence in Bihar, what conclusions would an independent observer come to? Should not the government, under Presidential Rule ban the Ranvir Sena and disarm it, and use Central forces to do so?

But that may not be part of the agenda of the leaders of the BJP or its ally, the Samata Party, today. What happens in the next few days will expose Governor Bhandari's partisan approach. It would perhaps—again, depending on the course of events over the next few days—indicate whether the present coalition government is really fit to govern the country. ◻

TRANSFER OF CORRUPTION CASES AGAINST JAYALALITHA

Legal Quagmire of the Centre's Decision

VIJAY KUMAR

The Central Government's decision to transfer the corruption cases against Jayalalitha from the Special Court to the general court has disturbing implications in both political and legal terms. From the standpoint of political morality and probity in public life, the transfer of cases represents a serious setback in democratic praxis to cleanse the agean stable of Indian politics. In the process the BJP as a party has repudiated its claim of providing corruption-free governance by irretrievably compromising its reputation of a clean and corruption-immune party and particularly its glorious record of combating the corruption of Laloo Yadav in Bihar.

Legally the notification issued by the Central Government transferring the cases from the Special Court to the general court is questionable on many counts.' To begin with, the Central Government's notification is liable to be questioned on the touchstone of colourable exercise of power and malafide, the grounds which, if established succesfully, will vitiate the notification. Prima facie the imputation of malafide and colourable exercise of power, which is nothing but manifestation of abuse of power, has a ring of plausibility and even veracity. Though the legal discourse, as far as possible, ought to be kept separate from the political matrix and milieu, the political contour and dimension with its own and structual logic of survival of the Central Government at any cost and specific context and conjecture cannot wholly be divorced from any meaningful legal scrutiny, particularly for the purpose of establishing the malafide and extraneous considerations informing the Central Government's decision.

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Jayalalitha's contumacious, yet characteristic, refusal to sign the resolution of the coordination committee of the ruling coalition on the issue of price rise of foodgrains distributed through the public distribution system and the subsequent failure of the effort of George Fernandes to humour the hubris by genuflecting before her coupled with Sonia Gandhi's clarion call to topple the government virtually compelled the Vajpayee Government to issue the notification of dubious legality. Since the very survival of the Vajpayee Government was in doubt, the stake was understandably high. This compulsion alone accounts for the unseemly hurry with which the notification was rushed through even when the apex judiciary was seized with the validity of the notification setting up three Special Courts issued by the State Government in a Special Leave Petition filed by none other than Jayalalitha herself. The compulsion of the ruling party for its survival, however, entails terrible cost for the credibility of the courts and the sanctity attached to its proceedings and orders and the majesty of the rule of law itself.

The notification issued by the Central Government is plainly arbitrary and thus inherently discriminatory and therefore, eminently susceptible to be interdicted by the Court on the anvil of the overarching mandate of Article 14 of the Constitution. The arbitrariness lies in two respects: First, there was no need at all to transfer the case particularly when the Supreme Court was seized of the matter; and the second, and more fundamental, instance of arbitrariness lies in the ineluctable

in the State Assembly, only because of his personal animus against Laloo Prasad Yadav.

Look at it this way. In how many States should Central rule be imposed under Article 356 of the Constitution because of occasional murders/massacres? Delhi has the highest crime rate in the country. Assam (with its Bodoland problem, as well as its ULFA) should perhaps be the first to invite Central rule; but would that solve any problem? Despite the presence of a strong Army contingent, the number of occasions in which Santhals and others in Bodoland have been massacred far exceeds the toll in Jehanabad.

The 'seeds' of discord, and of violent clashes between groups were sown long ago—through the total neglect of the Directive Principles of State Policy enshrined in the Constitution—and the discordant trends have been given a boost under the so-called liberalisation-cum-globalisation process which has only accentuated economic disparities in the country. And, we have had a succession of foolish governments which have unwarrantedly increased the salaries and perks of all civil servants, leaving no money for any genuine development effort, and yet fomenting inflation. And, now we have these self-same fat bureaucrats passing highly objectionable judgements on the protests by the have-nots, which tend to turn to violence. Consider in this context the recent statement by the District Magistrate of Jehanabad district, immediately after the imposition of President's Rule. He announced that the authorities would now clamp down heavily against the CPI-ML; not a word was spoken against the 'Ranvir Sena' whose massacres brought on President's Rule. The Hon'ble President of India may kindly note.

In principle, of course, Article 356 of the Constitution should never be used in practice. Perhaps its only justification for remaining in the statute book is that it provides a temporary solution only in the event of a total Constitutional deadlock in the sense that no combination of Assembly members is in a position to constitute a government; and fresh elections may be necessary, until which time a 'caretaker' government (which could be Central, and in theory neutral) may be necessary. Else, an elected majority in a State Assembly is as authentic as a majority of members elected to a Union Parliament; and let not the latter feel they are superior beings, in a position to dictate on all matters allotted to State Governments under the Constitution. But, forget that salutary principle. In the instant case, the issue brought up is that the Ranvir Sena has gunned down a few hapless Dalits (which they have, of late, started doing at regular intervals).

Unfortunately, in a recent meeting of the Inter-State Council, no agreememt could be reached among even the States in regard to the use/misuse of Article 356 of the Constitution. No State Government (or political party) would like the use of this provision in its own territory; ambivalence arises, alas, only when some other State (ruled by some other party) is concerned. Is this not an instance of double standards? Would not this approach encourage more violent protests? Especially because we have thus far paid no attention to effectively implementing the Directive Principles of State Policy since independence, nor even given effect to the Seventythird and Seventyfourth Amendments to the Constitution?

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In a sense, the 'land' question goes to the heart of the problem. But that is an old problem, still the major source of exploitation in a larger number of States. To target the Rabri Devi Government (enjoying a stable majority in the State Assembly)—under pressure from wholly opportunistic and illegitimate calls by irresponsible partners in the Central coalition—shows how weak and vulnerable the present coalition at the Centre is. Indeed, are not even some of leaders of the BJP in Bihar somewhat closely connected with the Ranvir Sena? Has anyone spoken against, or even targeted (under Central rule) the Ranvir Sena? The latter is known to be an illegal private army of the landowners. Therein arises much food for thought.

President Narayanan—who had earlier sent back the Cabinet recommendation on this very issue, for reconsideration—had perhaps no choice, as per our Constitution. It is unfortunate that he chose to add a few words, while signing the Presidential assent, reportedly purporting to state that the "government of Bihar is unable to carry on its duties according to the provisions of the Constitution". Has the Centre done so? In how many other States do we have the same or similar problems? Could the problem have been resolved by the Centre offering some Central forces in Jehanabad district? Since there are indications of links between some BJP leaders in Bihar and some bits of the Ranvir Sena, how does an impoverished State Government, with an inadequate police force, fight this problem, where the ruling elite at the Centre extends tacit support to the "oppressors" rather than the "oppressed"?

As of writing, a Bihar bandh has been called. There could be both violence and repression during (and following) the bandh. In case that happens, could it be that the imposition of President's Rule leads to an intensification (rather than a mitigation) of violence in Bihar?

What is done is done; but we must draw lessons for the future. The tragedy is that no large, organised political party in Bihar appears to be willing to look into the root causes of the problem. One need not commend the violence perpetrated by some sections of the CPI-ML in Bihar. Yet, is it not true that most CPI-ML workers in Bihar have been known, for quite sometime, to strive to work within the Constitution? How do they react when the district authorities target them rather than the Ranvir Sena, as the District Magistrate of Jehanabad publicly announced as soon as Central rule was proclaimed? Who can deny that the CPI-ML works for and on behalf of

Sundar Singh Bhandari as the State Governor, confirm, the Centre's step was a political move to oust the Rabri Devi Government from power in spite of its undiminished majority support in the Assembly. In the circumstances such issues as the Dalit massacres in Jehanabad cannot blur one's objectivity to defend the Presidential proclamation as a great service to democracy as some Opposition leaders belonging to the State—from Dr Jagannath Mishra to Ram Vilas Paswan—have done. Paswan has also betrayed rank partisanship by linking up the dismissal of the State Government with Laloo Yadav's corruption which anyway is an extraneous factor in the whole controversy. Actually it is democracy that has once more been sought to be stifled by the application of Article 356 in Bihar.

(One more point needs to be underscored. If the Bihar Government merits dismissal on account of its misrule what prevented the Centre to dismiss the Maharashtra Government being remote-controlled by Bal Thackeray despite his manifold misdeeds which have turned out to be a source of great embarrassment for the Prime Minister?)

It is ironic that just as a global conference on democracy was taking place in the Capital, democratic norms have been again trampled underfeet by those at the helm in New Delhi. But then isn't this the practice in today's unipolar world, witness the arbitrary actions—bordering on lawlessness—of the global supercop in differents parts (from Iraq to Kosovo)? Washington has threatened Belgrade with unilateral use of force in the form of airstrikes unless it accedes to the US directive of stationing 40,000 NATO ground troops in Kosovo (obviously as a prelude to ensuring that region's secession from Yugoslavia), a demand the Yugoslav Government has flatly rejected as a flagrant interference in its internal affairs and hence alien to the very democratic ethos the world's sole surviving superpower ostensibly seeks to preserve and protect by acting as the international bully.

As one witnesses a new wave of bonhomie between Washington and New Delhi following the substantive discussions (on the time-schedule of signing the CTBT on the part of the Vajpayee regime in deference to the wishes of the White House) at the just concluded eighth round of the Strobe Talbott-Jaswant Singh talks, it is instructive to understand that South Block is brazenly subverting democracy within the country following the White House's lead in lately surpassing all its own previous anti-democratic records across the globe. This aspect of the "close relationship" between the world's largest democracy and the most powerful democratic state could not have possibly been highlighted at the global conference on democracy funded as it was by the Washington-based National Endowment for Democracy which has seldom raised its voice against the terrorist and anti-democratic proclivities of the Clinton Administration. But the conspicuous silence of a large part of the Indian intelligentsia, including Prof Amartya Sen, on this score is bewildering, to say the least.

Democracy, like peace, being indivisible, it cannot be bolstered in the Third World when it is itself under siege in the US as the inevitable consequence of Washington's persisting autocratic behaviour in the international arena.

February 17 S.C.

Article 356 of the Constitution and the Bihar Scenario

ARUN GHOSH

The imposition of President's Rule in Bihar raises some serious issues, both in regard to the Constitution and in regard to the direction in which this country is headed. That there has been a virtual 'war' between an illegal Ranvir Sena (constituted and funded by the landed gentry) of Bihar and the poor 'Dalits' of Bihar—to keep the latter in their place—is an old story. That, on occasion, some groups of CPI-ML workers have fought back and, in turn, succeeded in extracting a small toll through the massacre of a few landowners, is also an old story. Jehanabad today is as famous as Naxalbari was in the seventies and Warangal in the eighties.

There are several problems herein. Successive governments in Bihar have done nothing to solve either the land problem, or even the rank exploitation and repression of Dalits in Bihar. Free labour to be rendered by the Dalits is an old story; denial of even well water to the pitifully poor sections of society by the higher caste groups is also a familiar story; and with a 'million wells' programme, the Centre has done nothing to provide even drinking water to the most distressed sections of the society. Unfortunately, the 'vote-banks' determine the attitudes of all governments; and that has been true of Bihar as well. Only a few highly dedicated individuals have been working with and for these deprived sections of the population. Perhaps the greatest tragedy in this scenario is that Ram Vilas Paswan—the so-called champion of the Dalits in Bihar—has welcomed the dismissal of the Rabri Devi Government, still enjoying a clear majority

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nation. We need a comprehensive policy to promote the growth of civil society interacting with various branches and levels of Government. Even in a developed and affluent society like the USA, there are around six million such organisations disposing of eight per cent of the country's GDP in their activities. Not only the Government but the private sector also has an important role to play in a comprehensive civic action plan. We have a model for us in the constructive programme chalked out and implemented during the independence movement by Mahatma Gandhi.

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I said a little earlier that this is an occasion for honest self-analysis. I think it would not be wrong to say that as a society we are becoming increasingly insensitive and callous. Gandhiji had tried to popularise the Gujarati song which describes the 'true Vaishnava' as one who knows the other person's pain. He may not find too many of that description in India today. Be it the way cars and buses are driven in our city roads, the way garbage, and particularly middle class plastic garbage, is strewn around, the way public servants treat the public, or the public handles public utilities, the manner in which we squander or pollute precious reserves like water, the way owners of vehicles allow toxic gases to be spewed into the air that we breathe, the way we allow children to be exploited, the disabled to be passed by, speaks of a stony-hearted society, not a compassionate one that produced the Buddha, Mahavira, Nanak, Kabir and Gandhi.

And then there is our greatest national drawback: the status of our women, and our greatest national shame, the condition of the Dalits, the erstwhile untouchables. Fifty years after our Constitution, the plain truth is that the female half of the Indian population continues to be regarded as it was in the eighteenth and nineteenth centuries. It is more than 170 years since Raja Rammohan Roy caused *sati* to be abolished. But the infamous practice still manages to raise its head and, what is worse, even gets explained away as 'suicide' or as saintly sacrifice! What one finds disconcerting is even the absence of political rhetoric on these social ills. Commenting on the male-female disparity in India, Gandhiji wrote in 1931: "You cannot have one set of weights and measures for the one and a different one for the other. Yet we have never heard of a husband mounting the funeral pyre of his deceased wife." Unless the status of women in Indian society changes, the 'Equality' spoken of in our Preamble will remain hollow. It is against this attitude of society and the habit of discrimination prevalent in society that the demand for constitutional reservation for women in the Legislatures and Parliament has become a compelling necessity.

We have to ponder over the condition of not only women in our society, but of the Dalits, the tribals and other weaker sections. Untouchability has been abolished by law but shades of it remain in the ingrained attitudes nurtured by the caste system. Though the constitutional provision of reservation in educational institutions and public services flow from our Constitution, these provisions remain unfulfilled through bureaucratic and administrative deformation or by narrow interpretations of these special provisions. It seems, in the social realm, some kind of a counter-revolution is taking place in India. It is forgotten that these benefits have been provided not in the way of charity, but as human rights and as social justice to a section of society who constitute a big chunk of our population, and who actually contribute to our agriculture, industry and services as landless labourers, factory and municipal workers. There are signs that our privileged classes are getting tired of the affirmative action provided by constitutional provisions. On this Golden Jubilee, I would like to say that let us not get tired of what we have provided for our weaker sections, for otherwise, as Dr Ambedkar pointed out, the edifice of our democracy would be like a palace built on dung heap.

If on an occasion like this Golden Jubilee of our Republic, we ponder some of these issues, it would be the better for us. While there is a need to be honest with ourselves, I must emphasise, we must act, not despair. In moments of crisis we rise gloriously to the occasion as few societies do. The late war in Kargil showed it; the cyclone in Orissa did so too. And, even more recently, the stoic fortitude with which the nearly 170 passengers and crew aboard the hijacked plane showed how we are capable of the highest endurance, calm, fortitude and human care. But we do not have to reserve our best qualities for national or natural calamities; they should manifest themselves in our daily life. The Biblical exhortation—'Do not do unto others what thou wouldst not others do unto thyself'—was anticipated by Vyasa in his words:

आत्मनः प्रतिकूलानि परेषां न समाचरेत्

(Aatmanaha pratikulaani pareshaam na samaacharet).

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The world watches us with a combination of admiration and concern: admiration at what we have achieved despite great odds, and concern over the

fact that, even with great investments of money and energy we remain far from our goal. *Indians* do well, they say; *India* does not. We must examine the import of that observation and try to rectify the situation. Of course the rest of the world, too, is faced by crises. The end of the Cold War has not ended all conflicts, it has only changed its character. Even as we want equality amongst ourselves, so do we want equality among the nations of the world. This does not and cannot mean that all countries have the same of everything. But it does mean that no nation or continent can seek overlordship over others claiming political, economic, technological or strategic superiority. We are privileged, as Indians, to have played a leading role in the decolonising of the mighty continents of Asia and Africa. We are the initiators of the concept of non-alignment in a world when it was bitterly divided by Cold War, and whether the great powers now recognise or not the role of non-alignment in ending the Cold War, the fact of its contribution remains for all to see. And we are also co-authors with the People's Republic of China of the Five Principles of peaceful co-existence which provide the world a code of conduct in international relations. The principles—like the respect for the territorial integrity and independence of nations, non-interference in their internal matters and mutual benefit and equality—are precious concepts which cannot become redundant in a world of globalisation. We are privileged also to be playing a role to see that in the new millennium all the nations of the world, enjoy the same political status and have a level playing field, economically and technologically. This will be our endeavour in all the world bodies of which we are proud to be members or associated with—the United Nations, the Commonwealth, the Non-Aligned Movement and the new formations such as the WTO and important regional groupings like ASEAN, SAARC, the Indian Ocean Rim Association.

We are proud to belong to South Asia and to the Asian continent. We celebrate this year the 50th anniversary of the establishment of diplomatic relations with China. We wish that country and its people every happiness. We want to live in peace with Pakistan. We want the relations to conform to the best traditions of good neighbourliness, eschewing terrorist interventions and the propaganda of hatred. In the spirit in which Jawaharlal Nehru declared in the Constituent Assembly, I take this opportunity to send greetings to all our immediate neighbours, to the sister continent of Africa, the Commonwealth of Nations, the European Union, the United States of America and Latin America, to Japan, and to the Arab nations and the countries of the Pacific and Central Asia with whom we have traditional ties of friendship. To Russia with which our political, economic, cultural and strategic relations remain strong we reiterate our fraternal goodwill.

I once again extend my greetings to all fellow citizens. May all of us cross'the golden milestone and march along the vision of the founding fathers of our Republic

Jai Hind.

Placing Accountability over Stability

It gives me great pleasure to be here amidst you at this function to mark the Golden Jubilee celebrations of the birth of the Indian Republic and commencement of our Constitution. The establishment of the democratic Republic of India was obviously a significant and glorious event for India, for the freedom and welfare of the hundreds of millions of its people. But it was also a world event of far-reaching significance. People talk about the triumph of democracy in the world against other forms of government. For that triumphal outcome, democracy in India has had a meaningful part to play not in the way of taking part in the ideological Cold War, but in the sense of setting an overpowering example in this world.

What Sir Anthony Eden, the Prime Minister of Britain, said at the time of the emergence of the Indian Republic is relevant in this context. He said, "Of all the experiments in government, which have been attempted since the beginning of time, I believe that the Indian venture into parliamentary government is the most exciting. A vast subcontinent is attempting to apply to its tens and thousands of millions a system of free democracy....It is a brave thing to try to do so. The Indian venture is not a pale imitation of our practice at home, but a magnified and multiplied reproduction on a scale we have never dreamt of. If it succeeds, its influence on Asia is incalculable for good. Whatever the outcome, we must honour those who attempt it."

Even more meaningful was the opinion expressed by an American constitutional authority, Prof